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Judgment by Film: Socio-Legal Functions of *Rashomon*

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In a number of respects the parties exhibit the typical “Rashomon” pattern—their differing factual versions reflect self-interested advocacy rather than objectivity.¹

Cases like this call upon courts to re-enact *Rashomon*. As in the great Japanese drama, the characters here all recite their stories with evident sincerity. But is it possible for courts in these cases to get to the truth any more than was possible in the classic Japanese play?²

INTRODUCTION

This Article is one example of a “film, law, and society” project.³ Hoping to contribute to the emerging body of “law and film” scholarship, this Article suggests that some popular feature films offer unique cinematic insight into our understanding of the relationship between law, society, and culture. Furthermore, some

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1. *Zalutsky v. Kleinman*, 747 F. Supp. 457, 458 (N.D. Ill. 1990).

2. *Messina v. Bonner*, 813 F. Supp. 346, 351 (E.D. Pa. 1993).

3. There is not much writing as of yet on “law and film.” For more “law and film” essays, see JOHN DENVIR, *LEGAL REELISM: MOVIES AS LEGAL TEXTS* (1996); Symposium, *Law & Popular Culture*, 22 *LEGAL STUD. F.* 1 (1998); *A Symposium on Film and the Law*, 22 *OKLA. CITY U. L. REV.* 1 (1997); Symposium, *Picturing Justice: Images of Law and Lawyers*, 30 *U.S.F. L. REV.* 891 (1996).

films go beyond contributing cinematic-theoretical input and conduct their own cinematic socio-cultural “judging-acts.” Engaging in socio-cultural dialogue with legal discourse, a film’s underlying structure may evoke its viewer’s unconscious, intuitive familiarity with legal notions and conventions, and, relying on “legal intuition” thus evoked, the film may manipulate it and engage the viewer in its own implicit judging process. Such cinematic proceedings are distinct from fictional legal proceedings portrayed on-screen. Judgment by film may use a film’s characters, plot, imagery, and structure to represent more general social issues and may result in very real influence on the world-view of audiences, who are also society’s jurors, judges, and “reasonable people.” In the “law and film” relationship, film may therefore play far more active theoretical as well as “socio-cultural judging” roles than portraying legal issues and courtroom drama, or supplying plots for legal analysis. This “cinematic activism” is particularly interesting, as it may go unnoticed and thus escape critical awareness.

Rather than present the concept of cinematic judging-act in a purely theoretical manner, this Article demonstrates its dynamics and significance, its close relationship with cinematic law and society theory, and its elusiveness through analysis of a single feature film: *Rashomon*.⁴

Akira Kurosawa’s *Rashomon* is arguably the classic, enduring, and most influential of all courtroom feature films. “[I]t has become one of those few films whose cultural importance has transcended their own status as films.”⁵ Presenting and commenting on several testimonies relating a criminal event, *Rashomon* offers complex, powerful insights on the human condition, the meaning of truth, and the nature of the legal process in its socio-cultural context.⁶ The film’s title has become a “legal-cultural” expression, used by the public and legal profession alike in reference, among other things, to

4. RASHOMON (Daiei Motion Picture Co. 1950; RKO Radio Pictures, Inc. 1952).

5. STEPHEN PRINCE, THE CINEMA OF AKIRA KUROSAWA: THE WARRIOR’S CAMERA 128 (1991). See also SARAH ROSTOVSKY-HALPERIN, ZANER HA-RASHOMON BA-SIPORET HA-YISRAE’ELIT [THE RASHOMON GENRE IN ISRAELI NARRATIVES] 26-36 (1991) (suggesting that the film inspired a new literary genre, which she named “the *Rashomon* genre”).

6. For those who are unfamiliar with the film, here is a very short summary (the next section offers a full presentation): Three men, a woodcutter, a priest, and a commoner, finding shelter from the rain under the decaying Rashomon Gate, review testimonies given earlier in a legal proceeding. The proceeding investigated the death of a samurai, which occurred after a sexual encounter between the samurai’s wife and an outlaw. At the Gate, the woodcutter relates his own testimony in court as well as the outlaw’s, while the priest relates his own testimony, the woman’s, and the dead man’s (through a medium). The commoner listens and comments. The woodcutter adds new testimony, different from that which he gave in court. The testimonies given by the samurai, woman, outlaw, and woodcutter contradict each other in many ways and do not allow for an understanding of the facts of the event. Finally, finding an abandoned baby, the commoner steals its coat, and the woodcutter takes the baby home.

the nature of law.⁷

“*Rashomon* has come to embody a general cultural notion of the relativity of truth.”⁸ The expression “*Rashomon*” encapsulates a disturbingly relativistic, skeptical view of truth, reality, humanity, and the nature of the legal process. Using the film’s title, we refer to a situation in which, as in the film, different witnesses to an occurrence offer completely incompatible testimonies of it, as if attesting to altogether different events. This usage implies that objective truth is unattainable and perhaps nonexistent, and that the legal process is a place where subjective narratives can only be evaluated against each other.⁹ Additionally, the term implies that humans in general and witnesses specifically compose their versions of reality and truth in the context of self-creation through story-telling; such story-telling voices the inherent human inability to accept ourselves for what we really are and the overwhelming need for self-deception and justification.¹⁰ Witnesses tell stories attempting to create themselves as different than the people who they fear they may actually be. The legal process, therefore, cannot but deal with stories that are likely to reflect their authors’ personal insecurities and mechanisms of self-creation through self-denial far more than the nature of the events brought to trial.

In this Article, offering a close reading of the film, I suggest that its celebrated, manifest skepticism regarding truth and law is but one theme, disguising the film’s not-so-skeptical, subtextual, socio-legal message and judging-act. The film’s implicit, underlying message is both theoretical and ideological; it is also inherently linked with the film’s judging-act, which constitutes *Rashomon* as a participant in society’s self-creating process. The theoretical component of

7. See, e.g., *supra* notes 1-2 and accompanying text. There seems to be some difference between the general use of the term and its more specialized use within legal discourse. General use seems to stress the relativity of truth and the deceptive nature of all humans, whereas the legal community focuses on the relativity of witnesses’ testimonies within the legal process. I believe the two uses are close enough to discuss together.

8. PRINCE, *supra* note 5, at 128.

9. See David Simon Sokolow, *From Akira Kurosawa to (Duncan) Kennedy: The Lessons of Rashomon for Current Legal Education*, 1991 WIS. L. REV. 961, 981 (1991): “What I wanted my students to come away with was what I humorously referred to as Kurosawa’s Law of Relativity: what ‘really’ happened depends on your perspective, your background, your orientation.”

10. This view is explicitly voiced by several of the film’s characters, as well as by Kurosawa himself in reference to the film’s message:

[H]uman beings are unable to be honest with themselves about themselves. They cannot talk about themselves without embellishing. This script portrays such human beings—the kind who cannot survive without lies to make them feel they are better people than they really are. . . . Egoism is a sin the human being carries with him from birth; it is the most difficult to redeem.

Akira Kurosawa, *Something Like an Autobiography*, in RASHOMON 113, 116 (Donald Richie ed., 1987).

Rashomon's subtextual message offers a vision of the close interrelations between legal and social judging, common wisdom, culture, and nature. The ideological component is deeply traditional, conservative, and uncritical. The film's subtextual judging-act relies on and invokes legal logic and conventions and the implied viewer's familiarity with them. Mirroring these legal conventions in its own judging-act, the film, in turn, influences law and society. It constructs its implied viewer as both judge and jury in a real-world cultural-socio-legal judging process.¹¹ As the film's judging-act involves the uncritical upholding and nourishing of conservative social views, the implied viewer is invited to rely on and embrace these notions, as is the film's real viewing community, consisting of real-life potential judges and jury members. In this manner, mirroring and influencing the social environment in which common wisdom is continually recreated and judgment ineluctable, the film substantiates and enhances its theoretical insight into the interrelations between culture, law, and society. Reading the film, I thus present it as a self-explanatory cultural text, reaffirming and reestablishing society's conservative, unexamined common wisdom that underlies both legal and social judgments. The nihilistic doubts, so vehemently presented at the film's shallowest textual level, are revealed to be a smoke screen, allowing the complex subtextual message to operate unnoticed and hence unscrutinized.

I begin the discussion by exposing *Rashomon's* underlying legal conventions and their impact on the implied viewer: how they determine the identity of the defendant in the film's judging-act and define the boundaries of the socio-legal issue at hand. This discussion of the underlying legal norms also serves to explicate the concept of the film's judging-act. Next, I show how the film offers its conservative social world-view as "common wisdom" to be adopted by the viewer and used to reach a "verdict" in the film's judging-act.

11. Using the term "implied viewer" I allude to narratology and its conception of the "implied reader" [/viewer] as a

theoretical construct, implied or encoded in the text, representing the integration of data and the interpretative process 'invited' by the text. . . . Such a reader is 'implied' or 'encoded' in the text 'in the very rhetoric through which he is required to "make sense of the content" or reconstruct it "as a world."'

SHLOMITH RIMMON-KENAN, *NARRATIVE FICTION: CONTEMPORARY POETICS* 119 (1983) (quoting Christine Brooke-Rose, *Round and Round the Jakobson Diagram: A Survey*, 8 *HEBREW U. STUD. IN LIT.* 153, 160 (1980)). The implied viewer is thus a part of the text, distinguished from the flesh-and-blood human being actually performing the act of viewing. Nevertheless, I do assume a close resemblance between the film's implied viewer and its actual Western audience, a resemblance that makes it easy for the real viewer to assume the role the text offers its implied viewer. The real viewer and viewing community are of great importance to my socio-legal analysis. I therefore move back and forth from the implied viewer to the actual viewer and viewing community. A further theoretical discussion of this point is beyond the scope of this Article.

Critical analysis of the film's layered structure reveals the manipulative association of the viewer with the film's fictional, on-screen judge and community, thus linking the film's judging-act to its fictional legal and social proceedings. This linkage elevates the status of the viewer's verdict (in the film's judging-act), implying that it is also "legal" and "social." Finally, one of the film's implicit theoretical insights is that the legal process is a public, socio-cultural arena, where some stories are shaped by accepted screening rules and others are completely silenced. "Admissible" tales are heard through and structured by the law, offering the public tools for cultural self-preservation and social judgment. I demonstrate how this insight can be used to uncover a film's own screening and silencing techniques, which allow only certain stories to be composed, heard, and judged, while others are denied. The film thus trains its viewer not to hear certain voices and their stories; this training invites the viewer to join the fictional on-screen judging community, and its effects may be described as cultural, social, and "legal."¹²

As stated above, *Rashomon* serves here as a case study and a metaphor. Let me suggest, at the outset, that in a media-influenced world, analysis of the dynamics of *Rashomon*'s cultural-socio-legal operation suggests how courtroom news stories, as well as fictional courtroom stories, function in the shaping of culture, society, and law. Further, I suggest that society and the legal world often share *Rashomon*'s manifest preoccupation with contradictory evidence, ignoring underlying socio-cultural values and mechanisms that determine the legal discussion and its range of possible decisions. A reading of *Rashomon* is therefore also more generally a reading of social and legal blindness.

Before embarking on a close textual analysis of *Rashomon*, let me briefly refer to the specific cultural context of this discussion. *Rashomon* was created in Japan, in Japanese, by a Japanese director (Kurosawa) using a Japanese screenwriter's script.¹³ The script was based on two short stories by the Japanese author Ryenosuke Akutagawa, *Rashomon*¹⁴ and *In the Grove*,¹⁵ which, in turn, rely on

12. I am aware that this roadmap is schematic and does not disclose the substantive arguments developed in this Article. Mirroring the structure and logic of *Rashomon*, each section in this Article adds a new perspective, aiming to surprise the reader and alert her to the many possible layers and points of view of interpretation. In a way, the Article's structure turns the film's logic on itself to expose its subtext, perhaps also stimulating its reader to further meditation on textual mediation and point of view.

13. See Kurosawa, *supra* note 10, at 115 (citing the unpublished script by Shinobu Hashimoto, Male-Female, as a source for Kurosawa's screenplay). See also JAMES GOODWIN, AKIRA KUROSAWA AND INTERTEXTUAL CINEMA 117 (1994).

14. RYENOSUKE AKUTAGAWA, *Rashomon*, in RASHOMON AND OTHER STORIES 34 (1952).

several eleventh-century Japanese tales.¹⁶ From this perspective, *Rashomon* is clearly a Japanese film. Furthermore, it is “the best-known Japanese film ever made.”¹⁷ But its incorporation within Western culture to the degree of becoming a widely used expression over the course of half a century makes *Rashomon* part of Western culture as well. In this discussion, I do *not* address *Rashomon*’s place within Japanese culture.¹⁸ Nor do I analyze Kurosawa’s (or Akutagawa’s) “Western” styles and influences.¹⁹ I look at the film strictly in the context of Western culture, implied viewers, and actual viewing community. More specifically, I look at the film in the context of Western (implied and actual) viewers familiar with the conventions of the Anglo-American common-law legal system. I assume throughout the Article that a viewer brings to the film her cultural notions, imagery, and set of associations; that a film is always read through a certain set of cultural concepts; and that one possible and acceptable reading of this film is as reasonably viewed in the Anglo-American West. The relevance of some of the film’s themes and messages to both Japanese and the Western contexts requires a cross-cultural analysis that is beyond the scope of this Article.²⁰

SYNOPSIS OF THE FILM

Though many have seen *Rashomon*, it may have been long ago. Each essay and review of the film offers a different description of it. I therefore offer a fairly detailed overview as the basis of the

15. RYENOSUKE AKUTAGAWA, *In the Grove*, in *RASHOMON AND OTHER STORIES*, *supra* note 14, at 19. Both the stories *Rashomon* and *In the Grove* are reprinted in AKIRA KUROSAWA, *RASHOMON* 175, 182 (1969); DONALD RICHIE, *FOCUS ON RASHOMON* 151, 157 (1972); and *RASHOMON*, *supra* note 10, at 97, 102.

16. For an enlightening presentation of the medieval Japanese tales and their comparison with Akutagawa’s 20th-century stories, see GOODWIN, *supra* note 13, at 117.

17. DONALD RICHIE, *Rashomon*, in *THE FILMS OF AKIRA KUROSAWA* 70, 79 (1996) [hereinafter RICHIE, *FILMS*]. Richie’s article, which has been republished many times over the last five decades, is still the standard treatment of this film.

18. For a fascinating reading of the film as expressing Japan’s post-war trauma, see James Davidson, *Memories of a Defeat in Japan: A Reappraisal of Rashomon*, in *RASHOMON*, *supra* note 10, at 1 (suggesting that Tajomaru represents the conquering Western world, whereas the samurai and his wife share the guilt and shame of Japanese defeat).

19. Agreeing with Akutagawa’s Japanese critics, Donald Richie claims that “he [Akutagawa] is ‘Western’ in the same way as Kurosawa: he is concerned with truths which are ordinarily outside pragmatic Japanese morality and, being concerned with them, he questions them.” RICHIE, *FILMS*, *supra* note 17, at 70; see also PATRICIA ERENS, *AKIRA KUROSAWA: A GUIDE TO REFERENCES AND RESOURCES* 28 (1979); GOODWIN, *supra* note 13, at 118. Reference to Kurosawa’s Western style and sources are common. Kurosawa himself mentions the Western character of *Rashomon*’s musical score and his attempt to revive the acting style of the silent film. See Kurosawa, *supra* note 10, at 115, 119-20. After directing *Rashomon* he directed his version of Dostoevsky’s *The Idiot* (Shochiku 1951).

20. Significantly, the film was far more successful in the Anglo-American West than in Japan. See RICHIE, *FILMS*, *supra* note 17, at 79-80.

subsequent analysis.²¹

At the Rashomon Gate

Superimposed on an image of a half-ruined gate in the rain, a title reads “Kyoto, in the twelfth century, when famines and civil wars had devastated the ancient capital.”²²

At the gate, three men find shelter from the rain: a meek Buddhist priest (played by Minoru Chiaki), later defined by the commoner as “smart-looking”; a humble woodcutter (Takashi Shimura, one of Kurosawa’s leading men); and a shrewd commoner (Kichijiro Ueda).²³ In what seems to be a state of shock, the woodcutter repeatedly mumbles “I don’t understand it,” and in reply to the commoner’s question, the priest explains: “A man has been murdered,” encapsulating the event to be discussed in detail throughout the film.²⁴

The commoner remarks that, to pass a rainy day, he would gladly let himself be entertained by the story of the case at hand. As he tears down the gate to start a fire, the woodcutter approaches him, pleading: “Well, maybe you can tell me what it means! I don’t understand it . . . all three of them . . .” As the commoner consents to listen, the woodcutter narrates his story.

21. Readers who remember the film may wish to skip this section. I mostly refer to the English translation of the videotape version of the film, *RASHOMON* (Janus Films 1994), rather than to the published English script, *KUROSAWA*, *supra* note 15, as the former is the version with which the public—and the legal system—are in everyday, actual contact.

22. *Rashomon* is a complex text with many narrations within narrations (stratified levels of narration). In order to distinguish and refer to these different levels, I use terms offered by narratology. The described title belongs to the film’s “extradiegetic” level of narration, as it is “the highest level . . . the one immediately superior to the first narrative and concerned with its narration.” RIMMON-KENAN, *supra* note 11, at 91; *see also* GÉRARD GENETTE, *NARRATIVE DISCOURSE: AN ESSAY IN METHOD* 227-52 (Jane E. Levin trans., Cornell Univ. Press 1980) (1972). The next level of narration, subordinate to the extradiegetic one, is the “diegetic” level. All the events at the Rashomon Gate belong to this diegetic level. The next level of narration, subordinate to the diegetic one, is the “hypodiegetic” level; the woodcutter and the priest’s narrations constitute this level. The next level of narration, subordinate to the “hypodiegetic” one, is the “hypo-hypodiegetic” level. The woodcutter’s, priest’s, policeman’s, and Tajomaru’s narrations within the woodcutter’s diegetic narration constitute this level, as do the woman’s and the dead samurai’s narrations within the priest’s diegetic narration.

23. “Woodcutter,” “priest,” and “commoner” are the characters’ definition in the English film script. *See* *KUROSAWA*, *supra* note 15.

24. In the cynical tone that characterizes him throughout the film, the commoner observes that people are murdered all the time; in fact, the Rashomon Gate itself is often burdened with five or six bodies, and nobody cares. In a long, melodramatic reply, the priest stresses the significance of the specific murder about to be related:

You are right. War . . . earthquake . . . wind . . . fire . . . famine . . . plague . . . yes, each year is full of disasters. And now every night . . . the bandits descend upon us. I, for one, have seen hundreds of men dying like animals . . . but I’ve never before heard anything as terrible as this. Horrible . . . it’s horrible . . . There’s never been anything . . . anything as terrible as this . . . never. It is worse than fires . . . wars . . . epidemics . . . or bandits.

The disgusted commoner asks for no more sermons and the priest pauses.

The Woodcutter's Narration

The woodcutter relates how three days earlier he had gone to the mountain for wood. Presenting his story on-screen as a single, lengthy flashback, the camera follows him as he makes his way through the bush. Extreme close-ups of the woodcutter and his ax, traveling and panning shots through the bush to the sky and the sun above, create a lengthy, "impressionistic" scene,²⁵ one of the film's most celebrated. The camera travels alongside the woodcutter as he finds a woman's hat and veil, a man's hat, some rope, an amulet case, and finally, a body. The woodcutter's voice-over relates: "I ran as fast as I could to tell the police." (Wipe).²⁶

Facing the camera (medium shot), the woodcutter is seen sitting in a courtyard completing his testimony, replying that he saw no sword or anything other than what he had mentioned. The priest is seen seated at the far end of the courtyard.²⁷ Next, the priest, taking the woodcutter's place in the courtyard, facing the camera (medium shot, the woodcutter seen at the far end of the courtyard), testifies to having seen the dead man and his wife. In the priest's flashback within the woodcutter's flashback, we see the priest walk through the forest, passing a cheerful, loving samurai (Masayuki Mori) and a veiled woman on horseback (Machiko Kyo).

After the priest, a policeman (medium shot) faces the camera and viewers, as he testifies in the courtyard. The priest and the woodcutter are seen sitting at the far end of the courtyard. The policeman's testimony is presented on-screen in a flashback-within-a-flashback showing how he captured Tajomaru, the outlaw (Toshiro Mifune), squirming in agony on a riverbank with the dead samurai's horse, sword, and arrows next to him. (Toshiro Mifune is by far the most impressive actor in the cast, as well as the most prominent in Kurosawa's early films. He is the film's leading man). The policeman suggests that the dead man's horse must have thrown off his master's murderer. Tajomaru, sitting next to the policeman, hisses and laughs. He claims, in an on-screen flashback-within-a-flashback, to have taken ill drinking bad water at the spring. Half-naked, arms tied behind his back, he is majestic, proud, and fearsome, a noble savage demanding to be heard. "It's the truth," he declares at the outset of

25. RICHIE, FILMS, *supra* note 17, at 77.

26. The term "wipe" refers to "[a] transition from one scene to another in which a new scene gradually appears while pushing or 'wiping' out the old." IRA KONIGSBERG, THE COMPLETE FILM DICTIONARY 462 (1997).

27. The script defines the courtyard as the "prison courtyard," stating that "he is obviously being questioned though we hear only his answers." KUROSAWA, *supra* note 15, at 30. As we do not know who the questioning authority is, it may be a police official, a prosecutor, or a judge.

his testimony, "I know you will kill me sooner or later. I am not hiding anything. It was me, Tajomaru, who killed that man. It was a hot afternoon that I saw them."

Tajomaru's testimony, the first version the film offers of its central event, is by far the longest.²⁸ This testimony is also the most detailed and complex in its masterful combination of "show and tell." It consists of five "courtroom scenes" in which the outlaw, in dramatic close-up shots of his expressive face and naked upper body, addresses camera, (unseen fictional) judge, and viewers. These scenes are complemented by four extended flashback-within-flashback scenes, representing Tajomaru's story on-screen.

"It was a hot afternoon that I saw them," narrates Tajomaru, facing camera, judge, and viewer. "All of the sudden there was this cool breeze. If it hadn't been for that breeze I might not have killed him." Cut to the half-naked Tajomaru, leaning against a tall (phallic) tree (dramatically emphasized by the camera), his legs spread wide.²⁹ A samurai passes by, leading a horse. Just then, the breeze, accompanied by "bell-like" music, lifts the veil off the young woman on horseback, and for a split second her carefully made-up face is revealed. Her tiny feet are dangling in a spoiled gesture, like a child's. Tajomaru is aroused, his eyes dreamy, his hand grasping the sword between his legs, raising it in a phallic gesture. Cut to the courtyard, where the outlaw (close-up, facing the camera) explains:

Just for a glimpse . . . then she was gone. I thought I'd seen an angel. I decided I'd take her . . . even if I had to kill the man. But if I could do it without the killing—all the better. So I decided not to kill but to somehow get the woman alone. The road to Yamashima was hardly the place, though.

Cut to the outlaw approaching the samurai, showing him his sword (in one of many grand, phallic gestures) and offering to lead the samurai to a buried treasure of swords, which he, Tajomaru, would be willing to sell cheaply. Eager to see the swords (said to be stolen by the outlaw from a desecrated tomb), the samurai leaves the woman by a brook, where she gently plays with the water, and follows the outlaw into the bush. In an isolated clearing, the outlaw attacks and ties up the samurai, and rushes back to the woman by the water, reporting "your husband . . . he's been bitten by a snake." Cut to the courtyard where, facing us (close-up), Tajomaru painfully

28. Tajomaru's testimony takes 21 minutes, over 25% of the film's length. The woman's and the samurai's testimonies, which follow Tajomaru's, are each 10 minutes long. The woodcutter's second testimony, which is also the concluding one, is approximately 15 minutes long.

29. I thank Matan Meridor, who pointed out the significance of Tajomaru's association with the trees in class discussion.

discloses:

She turned pale . . . and stared as if her eyes were frozen. She looked like a child turned suddenly serious. Her look made me jealous of that man. I started to hate him. I wanted to show her how he looked tied up like that. I'd not thought of such a thing before, but now I did.

Cut to a traveling shot of the outlaw pulling the woman through the bush, where she loses her hat and veil, all the way to the clearing. There, for a very long, silent minute, the three look at each other, the camera taking on their respective points of view. Then the woman grabs her dagger, and for another long minute and a half she attacks the outlaw fiercely and skillfully, attempting to stab him. Bewildered, excited, amused, and engaged, he rebuffs her attacks (although not a bite), his voice-over commenting "she was fierce, determined." Finally, realizing her defeat, sweating and breathing heavily, she sobs as Tajomaru approaches and grabs her. The samurai turns his face away and down, shutting his eyes. The outlaw laughs, looking at the samurai, as the woman continues to struggle in his arms. As this episode is important to my discussion, I include the script's description of it:

161 *LS* [Long Shot]. *The woman is in the foreground, helplessly sobbing; Tajomaru in the background. He stalks up to her, she lunges yet again, but now he grabs and holds her.* [15 seconds]

162 *CU* [Close-up] *of the husband watching them; he bows his head.* [5 seconds]

163 *CU.* *The woman claws Tajomaru's face; he wrests her head free [. . .]³⁰ She struggles but he kisses her.* [7 seconds]

164 *The sky seen through the branches of the trees (pan).* [2 seconds]

165 *CU of the bandit kissing her; she stares straight up.* [4 seconds]

166 (= [same shot as] 164). *The sky seen through the overhead branches (pan).* [2 seconds]

167 *CU from reverse angle; Tajomaru holding her, kissing her.* [1 second]

30. According to the script he "pushes her to the ground (camera tilts down)." KUROSAWA, *supra* note 15, at 73-74. In the film, he does not push her to the ground and they remain standing.

168 (=164) *The sky and trees. The camera has stopped panning; now the sun is seen shining brilliantly through the branches. Bell-like music begins. [3 seconds]*

169 *ECU [Extreme close-up] from reverse angle; Tajomaru kissing the woman, as she stares blankly at the sun. [3 seconds]*

170 (=168) *The sun through the branches; slowly the scene goes out of focus. [4 seconds]*

171 (=169) *ECU. The woman closes her eyes. [4 seconds]*

172 *ECU of the dagger in her hand, Tajomaru tightly gripping her wrist. Her fingers loosen, the dagger drops to the ground. [2 seconds]*

173 *ECU of the dagger sticking point first in the ground. [2 seconds]*

174 *MS [Middle shot] of Tajomaru's back, the woman in his arms. The camera slowly dollies toward them. Her hand encircles his back, her fingers move caressingly; she tightens her grip on him: she is giving herself. [11 seconds]*³¹

Cut to a close-up of Tajomaru, bursting with wild laughter in the courtyard, concluding: "And so I had her and without killing her husband. Besides, I hadn't planned to kill him. But then . . ." Cut to the scene of the woman rising from the ground, grabbing the bandit and demanding: "Stop! One of you must die—either you or my husband. . . Either he or you must die. To be doubly disgraced . . . disgraced before two men is more than I can bear. I will belong to whoever kills the other." Accepting her proposal, Tajomaru releases the samurai and the two engage in a lengthy, professional, heroic duel that leads to the samurai's death. Cut to the courtyard, where Tajomaru proudly faces the camera, judge, and viewer, explaining: "I wanted to kill him honestly, since I had to kill him. He fought really well. We crossed swords twenty-three times. No one ever crossed swords with me more than twenty times. But then I killed him." The camera dollies to reveal the policeman by Tajomaru's side and the priest and woodcutter in the background. Replying to unheard questions, the outlaw continues:

What? The woman? Oh, her! She wasn't around. Probably got frightened and ran away. She must have been really upset. Returning down the path I found the horse grazing there. About

31. *Id.* at 71-78. The woman's response to the sexual attack is one of the film's original additions to Akutagawa's stories.

that woman . . . it was her temper that interested me. But she turned out just like any other. I didn't even look for her. What? His sword? I sold it and drank up the money. Her dagger? I remember: it looked valuable. Some kind of inlay in it. Know what I did? I forgot about it! How foolish! The biggest mistake I ever made!

Tajomaru breaks into a wild laughter, kicking his feet on the ground. Cut to a close-up of *"the rain pouring off the eaves of the Rashomon; the sound of the great downpour. Tilt down to reveal the three men below."*³²

At the Rashomon Gate

Stretching, the commoner remarks: "Tajomaru, he's famous for that sort of thing. He is worse than all the other bandits in Kyoto." But at his suggestion that Tajomaru must have killed the woman, the priest remarks: "But the woman turned up in prison, you know. It seems she was hiding in the temple . . . the police found her."

Woodcutter: "It's a lie! They're all lies! Tajomaru, the woman . . . all lies . . ."

Commoner: "Well, men are only men That's why they lie. They can't tell the truth, even to themselves."

Priest: "That may be true. Because men are weak. They lie . . . to deceive themselves."

Commoner: "Another sermon! I don't mind a lie . . . if it's interesting. What kind of story did she tell?"

Priest: "Hers was completely different from the bandit's story. Everything was different. Tajomaru told of her strength. I found her pitiful. I felt compassion for her."

The Priest's Narration

Through his on-screen flashback, the priest narrates the woman's testimony in the prison courtyard. The woman is seen sobbing on the courtyard floor, the priest and the woodcutter seated at the far back end of the yard. The woman relates:

And then . . . after having taken advantage of me . . . he proudly told me that he was the bandit . . . Tajomaru. And then he sneered at my husband. Oh, how terrible it must have been for him. The more he struggled—the tighter the ropes became. I couldn't stand it. I ran towards him . . . or tried to . . .

Cut to the woman's on-screen flashback within the priest's flashback. The woman runs toward her husband, but is stopped by

32. *Id.* at 87.

Tajomaru, who takes the samurai's sword, and leaves the forest clearing laughing wildly. The couple is left silent and alone, but for the soft musical score. The woman is lying near the bound man, weeping, then rushes to him and hugs him, continuing to sob. Her tormented face is shot from over his shoulder; then a reaction shot of his cold expression (from over her shoulder) as he looks at her; another reaction shot of her face, this time as she faces camera, judge, and viewer in the prison courtyard. "Even now I remember his eyes What I saw in them . . . was not sorrow . . . not even . . . anger It was . . . a cold hatred of me." Another reaction shot of her face, this time back in the narrated flashback scene in the wood. Expressing deep pain and horror (her face shot from behind the man's shoulder), the woman retreats from her husband, repeating, as if in a trance: "Don't! Don't look at me like that! Beat me! Kill me if you must . . . but don't look at me like that! Please don't!" Covering her face with both hands, childlike, facing a frightening view, she retreats and falls to the ground sobbing. She runs to fetch her dagger, releases the samurai, offers him the dagger and demands: "Then kill me! Kill me quickly with one thrust!" Her agonized face is shot from over his shoulder. Then the camera circles them both, capturing his still, frozen, contemptuous expression. Holding the dagger, the woman, seemingly hypnotized by his gaze, slowly retreats, then returns, constantly repeating: "Don't look at me like that!"³³

*251 CU of the woman as she moves steadily forward now; her world forever destroyed, she holds the dagger high, without seeming to be aware of it. The camera tracks with her in the direction of her husband until she suddenly lunges off screen. [21 seconds]*³⁴

Cut to a middle shot of the woman reclining on the courtyard floor, saying:

And then . . . I fainted. When I opened my eyes and looked about—she bursts into tears—I saw . . . the dagger in my

33. The published script reads:

245 *CU* [Close Up]. *She comes forward again, dagger extended. WOMAN: don't!* [7 seconds]

246 (=244) *CU of the husband staring; her sobs are heard.* [1 second]

247 (=245) *CU of the woman, backing off again, crying.* [3 seconds]

248 (=244) *CU of the husband, as before.* [1 second]

249 (=245) *CU. She continues to move, the camera seeming to weave with her painful approach and retreat before her husband. She holds the dagger almost absent-mindedly; her desperation grows.* [7 seconds]

250 (=244) *CU of the husband, staring implacably.* [1 second]

Id. at 97. In Akutagawa's story, the woman explicitly confesses to killing her husband, claiming she planned to commit suicide and failed.

34. *Id.* at 97-98.

husband's chest. . . . I didn't know what to do. I ran . . . through the forest I must have . . . though I don't remember. Then I found myself standing by a pond, at the foot of a hill. [Cut to a shot of a lake, illuminated by a low sun, a strong breeze moving over the surface]. I threw myself into it. . . . I tried to kill myself. But I failed. What should a poor helpless woman like me do?

She sinks to the ground, crying. Cut to the rain pouring on the steps of the Rashomon Gate.

At the Rashomon Gate

Commoner: "I see. But the more I hear, the more confused I become. Women lead you on with their tears They even fool themselves. Now, if I believed what she said I'd be really confused."

The Priest's Narration

Through his on-screen flashback, the priest narrates the dead man's testimony as given in the prison courtyard through a female medium (Fumiko Humma).³⁵ In a hollow (dead man's) voice, the medium states dramatically: "I am in darkness now! I am suffering in the darkness! Cursed be those who cast me unto this hell of darkness." Next, she delivers a narration of the events, which is seen as an on-screen flashback-within-a-flashback: "After the bandit attacked my wife," relates the samurai's voice, "he tried to console her." The voice-over continues, as we see a long shot of the woman and Tajomaru sitting in the forest clearing:

She sat there on the leaves . . . staring down into nothing. The bandit was cunning. He told her that she could no longer live with her husband Why didn't she go with him . . . the bandit . . . rather than stay behind to be unhappy with her husband? He said he only attacked her because of his love for her.

Cut to the medium as the voice continues: "Never, never in all our life together, had I seen her more beautiful!" Cut to a close-up of the samurai's tormented face (in his flashback), as he shuts his eyes in pain in view of his seduced wife. His dead voice continues to narrate: "And what was my beautiful wife's reply to the bandit . . . in front of her helpless husband? 'Take me! Take me with you.'" Cut to the medium as the voice continues: "That was what she said. But that is

35. As the priest mentions the dead man's version, the woodcutter once again yells that they are all lying. The priest refuses to believe that dead men lie, but the commoner explains, "We all need to forget something, so we create stories. It is easier that way." I am treating the medium as if she were simply a tool, and not a narrating, human agent. This is the film's presentation of her. Yet of course, this makes the dead man's story removed once more.

not all she did . . . or I would not be here!” Cut to the dead man’s flashback, where Tajomaru is releasing the man and dragging the woman away with him. She stops and, turning to Tajomaru, demands “Kill him! As long as he is alive I cannot go with you. Kill him!” Cut to the medium, in the samurai’s voice: “Kill him. I still hear those words! They are like the wind, blowing me to the bottom of this pit. Has anyone ever uttered more pitiless words? Even the bandit was shocked to hear them!” Cut to the woman shouting “Kill him! Kill him!”

Horrified at her response, the bandit throws the woman to the ground, stepping on her, asking the samurai what he would like to have done with her. But as he speaks, the woman escapes and the bandit chases her. Returning many hours later, Tajomaru releases the samurai and leaves, saying: “Well, she got away. Now I’ll have to worry about her talking.” The samurai remains seated, frozen, weeping, heartbroken. Then he goes to the dagger, grabs it, and stabs himself. Cut to the medium in the prison courtyard, who now falls to the ground in a strong wind that covers her face with her veil. The dead voice concludes:

Everything was quiet. How quiet it was. It grew dark. A mist seemed to envelope me as I lay quietly in the stillness. Someone was approaching. Softly . . . gently, who could it have been? [Focus on the woodcutter who is sitting in the courtyard behind the medium, alert.] Then . . . a hand grasped the dagger . . . and drew it out.

The medium collapses, the woodcutter seen clearly behind her.

At the Rashomon Gate

The woodcutter paces up and down, proclaiming there was no dagger, rather a sword. The commoner talks the woodcutter into admitting that he did not disclose the whole truth in his first testimony for fear of getting involved. The commoner urges the woodcutter to tell his full version. The priest protests, saying: “I don’t want to hear; I don’t want to listen to any more.” The commoner then replies: “Stories like this are common enough now. I heard the demons on the gate died because of man’s horrors. . . .” Close-up of the woodcutter’s face as he proceeds to narrate his second story. This testimony, given at the gate, is shown as a single, long, on-screen flashback.

The Woodcutter’s Narration

On the ground by the weeping woman, Tajomaru is pleading with her to come with him, promising to do anything for her and

threatening to kill her if she refuses. In response the woman finally replies: "How could I, a woman, answer a question like that?" She grabs her dagger, runs to the tied samurai, and releases him. Tajomaru understands that the men must decide the issue by fighting, but the samurai, nervously backing away, holding his hand in front of him, shouts:

Stop! Stop! I refuse to risk my life for such a woman! [To the woman] You are a shameless whore! Why don't you kill yourself? [To Tajomaru] If you want her—I'll give her to you! I regret the loss of my horse more than the loss of her.

At this development, Tajomaru reconsiders and decides to leave the scene. The woman, horrified, begging him with her eyes, runs after him pleading, "Don't!" but he pushes her away, shouting, "Don't follow me!" On the ground, weeping (shot from between Tajomaru's legs, her husband standing above her), the samurai scolds her, and the outlaw rebukes him, saying: "Hush . . . that's unmanly! Women can't help crying. They're weak." The woman's crying turns into hysterical laughter as she rises and approaches the samurai first and then the outlaw:

It's not me! It's you who are weak! If you're my husband, why don't you kill this man? Then you can tell me to kill myself . . . like a real man would. But you aren't a real man. That's why I was crying! I'm tired. I'm tired of this farce. I thought that Tajomaru might find some way out. I thought . . . if he'd only really save me I'd do anything for him. But he's not a man either. He's just like my husband. [Spitting in Tajomaru's face, laughing, she adds:] Just remember . . . a woman only loves a real man. And when she loves—she loves madly, forgetting all else. But a woman can only be won with the strength of swords.

As the men look shamed, humiliated, confused, they assume fighting positions; the woman continues to laugh hysterically. The men engage in a long, tiresome, pathetic duel, their heavy breathing and comic falls attesting to their fear and incompetence. Having lost his sword the samurai begs: "I don't want to die! I don't want to die!" To the sound of the woman's blood-curdling scream the outlaw stabs him to death, breathing heavily. Tajomaru approaches the woman, but she drives him away and escapes. He returns to retrieve the sword from the dead samurai's body.

At the Rashomon Gate

Cut to the commoner remarking: "And I suppose that's the truth!" At the woodcutter's insistence that he does not lie, the commoner

dismissively remarks that no one admits to lying.³⁶ Alerted by a baby's cry, the commoner is the first to reach it. When the other two join him, they find him stripping the baby of its coat. To the woodcutter's shock, the commoner insists that his behavior is neither "evil" nor "terrible." He argues: "Me, evil? Then what about the parents of that baby? They had their fun, then they threw it away. That's evil!" The woodcutter points out that they left the baby with an amulet to protect it; he assumes that they must have suffered from having to abandon their baby. He accuses the commoner of selfishness, to which the commoner replies: "What's wrong with that? That's the way we are . . . the way we live. You just can't live unless you are what you call 'selfish.'" Provoked, the woodcutter retorts: "Brute! All men are selfish and dishonest! They're all excuses . . . the bandit . . . the husband . . . you!" Frustrated and outraged, the woodcutter attacks the commoner, strangling him in the fierce rain. But the commoner is still not silenced. He accuses the woodcutter of lying as well:

Look, you may have fooled the police, but not me. . . . So, where's the dagger? The pearl-inlay one that the bandit said was so valuable? Did the earth open its mouth and swallow it? Or . . . did someone steal it? Am I right? It would seem so. Now there's a really selfish action for you!

Slapping the horrified woodcutter, he summarizes: "Well, anything else you want to say to me? If not, I'll be going." He walks into the rain, leaving behind the devastated woodcutter and the weeping priest, who holds the screaming baby in his arms. Silent, the two men remain standing at the gate.

As the rain ceases, the woodcutter approaches the baby in the priest's arms. The priest screams: "What are you doing? Trying to take what little it has left?" The woodcutter, ashamed, shaking his head, replies: "I've six children of my own. Another won't make it more difficult."

Priest: "I'm sorry. I shouldn't have said that."

Woodcutter: "Oh, you can't afford not to be suspicious these days. I'm the one who should be ashamed. No, I'm grateful to you. Thanks to you I think I'll be able to keep my faith in man."

The priest hands the baby over to the woodcutter. Emotional,

36. Their conversation runs:

Priest: "If men don't trust one another then the earth becomes a hell."

Commoner: "Right, the world is a kind of hell."

Priest: "No! I trust men! I don't want to believe that!"

Commoner: "No one will hear you no matter how loud you shout. Just think, which one of these stories do you believe? None makes any sense. Don't worry about it. It's not as if men were reasonable."

moved, the men bow to each other as the smiling woodcutter, holding the baby, leaves the gate and walks into the light of a clear day.

UNDERLYING LEGAL LOGIC AND CONVENTION CONSTITUTE THE FILM'S DEFENDANT

One of *Rashomon's* manifest, central themes is the attempt to know, understand, and judge the event in the wood, whereby, following a sexual encounter between Tajomaru and the woman, the samurai found his death. At first glance, the film seems to feature four irreconcilable testimonies of the event, the inherent contradictions between them precluding any coherent, reliable knowledge of the true facts and a responsible determination of legal and moral accountability. I suggest that by relying on underlying legal and cinematic logic and conventions, interwoven with "conventional wisdom," the film does offer a clear, if implicit, interpretation of the participants' accountability. The most obvious of these legal conventions is the order of storytelling in a criminal proceeding.

In any Anglo-American criminal proceeding, the prosecution is the first to present its version of the event before the court and call witnesses to narrate and support it.³⁷ Thus, the first story told in any criminal case is always the prosecuting story, presenting the event in a manner that constructs the defendant's legal accountability and criminal guilt. The first witness is always for the prosecution.

In *Rashomon*, the first version of the event in the bush is narrated by Tajomaru, the film's only name-bearing character and the cast's leading man. His is not a typical "defense version," as it does not answer to, admit, or refute any previous narration. As the first story told, Tajomaru's is the prosecutory one, voiced by a witness for the prosecution. Intuitively familiar with this basic legal convention, the film's implied (Anglo-American) viewer is invited to apply it and view Tajomaru's account as prosecutory within what I call the film's judging-act.

But if Tajomaru's testimony is prosecutory, who is it prosecuting? In a highly convincing performance, Tajomaru offers a clear answer. He did not mean to kill the samurai. He went out of his way to do all he could to avoid the killing. Having taken the woman, he was ready to depart. But the woman tempted him to fight the samurai, soliciting the act that brought about the killing.³⁸ If he committed the

37. For a concise description of the American criminal proceeding see 1 EDWARD J. IMWINKELRIED ET AL., *COURTROOM CRIMINAL EVIDENCE* 14-18 (3d ed. 1998).

38. Of course, within the film's fictional legal proceeding in the courtyard, Tajomaru's

killing, it was despite his better judgment, with utmost fairness, honor, and honesty. It was she who wished death, suggested it, brought it about. Soliciting a killing (or even a fatal duel) is clearly a grave criminal accusation.³⁹

If Tajomaru's narrative is presented as the prosecuting story, then, on the basis of legal convention, the implied viewer is invited to expect the defendant's counter version of those elements that incriminate her. A defendant need not offer a full version of the event, or prove how the crime was committed. If Tajomaru's story is a prosecuting one, then, by the legal convention, it should be followed by the woman's refutation of its incriminating elements. Indeed, immediately after Tajomaru's story, the film presents us with the woman's reply. But *Rashomon's* woman does *not* provide a full narration of the samurai's death. In fact, hers is the only version that does *not* attempt to fully explain either the death or the disappearance of the lethal weapon. She refutes the accusation of criminal solicitation by denying any dialogue between herself and the outlaw, as well as the duel between the two men. She claims that the lethal weapon was not the outlaw's sword but her own dagger. Claiming a temporary loss of consciousness during the time of the samurai's death, she does not offer a full account of it, but implicitly suggests a plausible alternative scenario: The samurai might have used her dagger to commit honorary, traditional suicide. She explains her fainting in light of the extreme distress, shock, and despair she experienced when confronted with her husband's sudden contempt and hatred.

I suggest that, in the context of the film's judging-act, the film's implied viewer is invited to understand the woman's testimony as a defendant's reply to an accusation. Relying on legal convention, this viewer now expects to be presented with the prosecution's reply. In the words of a well-known treatise on courtroom criminal evidence:

The third major evidentiary presentation is the prosecution rebuttal. As of right, the prosecutor may now present evidence refuting any new matters raised during the defense case-in-chief. The prosecutor may present evidence rebutting any affirmative

testimony constitutes him as a defendant as well. I suggest that, within the film's judging-act, the order of narration invites the implied viewer to hear Tajomaru's testimony as pointing, above all, to the woman's guilt. In this "proceeding," Tajomaru is a "state witness." The exact status of dueling in the film's fictional world and in its judging-act is somewhat vague. It seems to be constructed as criminal, yet not fully socially condemned.

39. The Model Penal Code defines solicitation as follows: "A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct that would constitute such crime or an attempt to commit such crime or would establish his complicity in its commission or attempted commission." MODEL PENAL CODE § 5.02 (1985).

defenses or attacking the credibility of the defense witnesses. . . . The judge may permit the prosecutor to present evidence logically relevant to any fact of consequence. For example, suppose that the prosecutor did not discover an eyewitness until after the prosecution case-in-chief. In his or her discretion, the judge could permit the prosecutor to call the eyewitness in rebuttal.⁴⁰

Thus the film permits the prosecution to present two new eyewitnesses, both rebutting the woman's defense and attacking her credibility. The dead man's testimony, although contradicting Tajomaru's account regarding the outlaw's own role in the fatal event, rebuts the woman's defense, strongly supporting and enhancing the accusation of her conscious, purposeful solicitation to kill, or even to murder. Whereas in Tajomaru's testimony the woman merely urges the outlaw to fight the samurai until one of them dies, in the samurai's version, she is accused of specifically demanding that the outlaw kill the samurai. She is claimed to have repeated that demand eight times. In case the implied viewer remains unconvinced by the dead husband's testimony, the film adds the woodcutter's second, out-of-court testimony, delivered directly to the viewer. Corroborating the other prosecutorial testimonies, the only eyewitness who seems to have not been personally involved in the event claims that the woman was very much conscious when she urged the men to fight and win her by the sword.⁴¹ Is the implied viewer invited to rely, as Curtis Harrington uncritically does, on the literary convention that "it is the final part that is the true story"?⁴²

The underlying legal convention regarding the order of the witnesses' testimonies does not resolve the factual enigma whether the man died by the outlaw's hand, his own, or the woman's, and whether it was the sword or the dagger that inflicted the mortal wound. It does, however, constitute the woman as the film's "defendant," focusing the implied viewer's attention and suspicion on her alleged behavior. It also creates the impression that the "prosecution" presented a strong case against the accused woman: Three separate eyewitnesses all testified to her guilt of solicitation to kill.

In constituting the woman as its primary defendant, *Rashomon* relies on and invokes the implied viewer's legal logic and intuition in an additional manner. The four primary testimonies can be viewed as

40. IMWINKELRIED, *supra* note 37, at 14.

41. The woodcutter's second testimony is one of the film's original additions to Akutagawa's stories.

42. CURTIS HARRINGTON, *Rashomon and the Japanese Cinema*, in *RASHOMON*, *supra* note 10, at 141, 144.

a series of arguments, each serving both as a defense argument, in reference to previous testimony, and as an accusation, triggering subsequent testimony. Each testimony roughly comprises an argument of “confession and avoidance,”⁴³ partly admitting the facts stated in the previous testimony, partly rejecting them and offering new facts. Each testimony’s new account of the facts redeems the witness from a severe accusation, while constituting an accusation of the next witness.

In his opening testimony, Tajomaru replies to the unspecified accusation brought against him using the logic of confession and avoidance. He admits to the fact of having actually killed the man but reveals new relevant facts. He describes a sexual encounter with the woman, portraying her as an accomplice who solicited a duel between the men, which resulted in the samurai’s death. Based on these new facts, he denies the implied accusation of murder, claiming manslaughter while dueling instead.

In her reply to his accusation, which also constitutes confession and avoidance, the woman admits only to having been sexually “taken advantage of.” She denies both having had any conversation with the outlaw and the alleged duel between the men. Substantiating her line of argument, she implicates the samurai, implicitly suggesting that he took the dagger from her hand and stabbed himself. (She is the only one of the three characters involved in the event who does not admit to any criminal wrong.) In his response (which also constitutes confession and avoidance), the samurai admits to having taken his own life.⁴⁴ He adds the fact of his wife’s insistent solicitation to kill him, claiming that her criminal act drove him to take his life. Additionally, the dead samurai mentions a person who came by and pulled the dagger out of his body (thereby bringing about his death?). The camera’s focus on the woodcutter, seated behind the medium in the prison courtyard, as well as the cut to the shot of the woodcutter nervously pacing at the gate, suggest an accusation.

Not surprisingly, the woodcutter is given the floor, and delivers his own (confession and avoidance) defense. He admits to being at the scene of the crime, and later, during the commoner’s “cross-examination,” also implicitly to stealing the dagger; but he denies the samurai’s accusation that he pulled the dagger out of the dying man’s body. Adopting Tajomaru’s account of the facts following the sexual

43. I use this legal term, which is borrowed from civil procedure, very loosely.

44. The exact status of the samurai’s suicide within the world of the film is somewhat vague. Even if prohibited, it seems to be respected as honorable. For a discussion of the samurai honor code or *bushido*, see *infra* notes 66-70 and accompanying text.

encounter (with slight modifications), the woodcutter claims that the sword, not the dagger, was the murder weapon. He accuses the outlaw of murder and the woman of conspiracy and solicitation to kill.⁴⁵

Viewed as a series of “confession and avoidance” claims triggering each other, the four testimonies construct the following account: The outlaw claims, “Yes, I did the killing, but it was the woman’s solicitation, after the sexual encounter between us, that drove me to do so; the samurai consented to fight.” The woman claims, “Yes, I was sexually violated, but solicited nothing; it was the samurai who took his life with my dagger and not the outlaw with his sword.” The samurai claims, “Yes, I committed suicide using the dagger, but the woman’s criminal solicitation drove me to do so; stealing the dagger from my wounded body, the woodcutter assisted the killing.” The woodcutter claims, “Yes, I was there, I took the dagger, but the dagger was not the murder weapon; the outlaw did the killing at the woman’s solicitation.”⁴⁶ Organized this way, only *one* of the four accounts implicates the woodcutter in the killing; *two* implicate the samurai in bringing about his own death; *two* implicate the outlaw in the physical killing; *three* accuse the woman of solicitation to kill. Again, relying on the underlying legal logic, the film invites its implied viewer to construct the woman as the primary defendant, whose alleged crime involves inciting, soliciting, tempting.

The significance of the sequence of testimonies is relevant to the film’s fictional, extra-legal, social judgment at the Rashomon Gate. Disregarding the woodcutter’s last testimony, it may also be relevant to the film’s fictional legal proceeding in the prison courtyard. But the relevance of the sequence of testimonies goes beyond the film’s fictional tribunals; it applies, above all, to the film as a cultural text, revealing its subtextual judging-act. Presented with this sequence, the implied (Anglo-American) viewer is invited to construct the woman not merely as the fictional tribunals’ defendant, but also as *the film’s own defendant*. Thus the film’s fictional tribunals are not alone in judging the woman; the film itself puts her on trial as well.

45. The Model Penal Code defines criminal conspiracy as follows:

A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (a) agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such crime or an attempt or solicitation to commit such crime; or (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such a crime.

MODEL PENAL CODE § 5.03 (1985).

46. Richie’s analysis offers an alternative reading: “The bandit admits to killing the husband; the wife admits to killing the husband; the husband admits to killing himself. There is no shifting of blame. Each pleads guilty.” RICHIE, FILMS, *supra* note 17, at 72.

Through the underlying legal conventions, the woman is, therefore, constructed as a defendant in three distinct contexts: the fictional legal proceeding in the courtyard, the fictional social process at the gate, and the real-life cultural act of viewing the film. The film, as such, performs a judging-act in which the woman is the primary defendant and the implied viewer is invited to join the film in judging her. The film's real-life judging-act is closely linked with the fictional legal proceeding and social judgment.

Despite the construction of the woman as primary defendant, the film does not supply solid grounds for any "legal" determination. Each of the testimonies is compelling but suspect, and none is clearly refutable. It is hard to think of any determination that would be beyond "reasonable doubt." In order to acquit the woman, all the men's testimonies must be discredited on the point of her solicitation to kill. In order to convict the woman of solicitation (and Tajomaru of manslaughter or murder), it seems necessary to discredit the woman and her testimony. Once the woman's testimony is discredited, all remaining testimonies point to her guilt of solicitation,⁴⁷ and most (Tajomaru's and the woodcutter's) implicate Tajomaru in the actual killing.⁴⁸ Parker Tyler captures the effect quite aptly, stating that "unless one be prejudiced for one sex or another, . . . it seems almost impossible to make a really plausible choice of the truth-teller (if any)."⁴⁹ The film joins its male characters in discrediting the woman, inviting the implied viewer to be prejudiced against one sex in favor of the other.

UNDERLYING LEGAL AND CINEMATIC CONVENTIONS CONSTRUCT THE SEXUAL INTERCOURSE

Tajomaru's testimony is not merely the first and longest; it is also the only version that describes the sexual intercourse that preceded the samurai's death. The samurai's death is described three times in great detail, in Tajomaru's, the samurai's, and the woodcutter's testimonies. In contrast, the sexual encounter is presented only once, in Tajomaru's first, prosecutorial version, which constructs the

47. The only one of the three who appears to have an ulterior motive in accusing the woman of solicitation is Tajomaru, who seems to need to justify the unnecessary killing he committed. The samurai himself and the woodcutter seem to have no self-serving motive that would explain their implication of the woman. The film, therefore, offers no apparent basis to discredit their testimonies on this point.

48. The samurai's testimony may easily be discredited on this point, as it is apparent why he would need to claim that he died by his own hand rather than by the hand of the outlaw. Nevertheless, in the film's fictional social judgment, Tajomaru is not necessarily condemned. See *infra* text accompanying notes 50-65, 73-74.

49. Parker Tyler, *Rashomon as Modern Art*, in *RASHOMON*, *supra* note 10, at 149, 151.

woman as primary defendant.⁵⁰

In Tajomaru's account, the sexual encounter was brought about by a series of natural factors: the wind, the woman's "beauty" (i.e. sexuality), and his own masculine nature. He saw her because the wind blew her veil (nature intervened to present her to him); she was beautiful, "irresistible"; (being the man he was) he wanted her; (being the man he was) he took her. In his narration, she was childlike, angelic, compassionate, and yet temperamental, wild. She was fierce, ferocious, yet also weak, delicate, and helpless. She was unpredictable, full of contradictions. He was attracted, intrigued, jealous; he had to have her. At first she fought him savagely, arousing his desire all the more. But then, once his lips were pressed against hers, the sun in her eyes, she gave herself to him, submitting erotically, naturally, as trees submit to sun, in passionate intercourse, a natural event.

Describing a passionate sexual conquest, a man winning a woman, overcoming her initial inhibitions and sweeping her off her feet, Tajomaru's story does not portray a rape.⁵¹ The intercourse he describes includes no criminal intent, no legal liability, and no woman taken forcefully against her will and without her consent.⁵² In his story, the woman was a passionately consenting partner long before the actual sexual intercourse began. As the scene features no rape, it features no rapist. Put differently, Tajomaru's story describes how, forced into a sexual encounter, a woman gives herself passionately, manifesting her deep desire to be taken against her proclaimed will.

Clearly, this account evokes the familiar myth according to which a sexually victimized woman must have secretly wanted the rape and brought it about. This myth, which has been exposed by many writers as a part of Western culture's "conventional wisdom," implies other common rape myths, such as the one that there is really no such thing as rape, since women want, need, and enjoy it, and the

50. Analyzing the film's reviews is a fascinating project yet to be undertaken. One telling comment is George Barbarow's observation that "[t]he bandit's narration [is] the longest because it includes the encounter along the forest road . . ." George Barbarow, *Rashomon and the Fifth Witness*, in RASHOMON, *supra* note 10, at 145, 145. Interestingly, Barbarow did not notice that Tajomaru's is also the only narration that includes the sexual encounter.

51. In a recent reference to the film, Andrew Taslitz similarly notes that the sexual encounter was, "in the bandit's view, no rape. Rather, this was a woman who feigned resistance, whether for the sake of honor or to test the bandit's resolve." Andrew E. Taslitz, *Patriarchal Stories I: Cultural Rape Narratives in the Courtroom*, 5 S. CAL. REV. L. & WOMEN'S STUD. 387, 411-12 (1996). He suggests that the samurai and woodcutter share Tajomaru's interpretation, whereas the woman experienced rape.

52. "A man commits rape when he engages in intercourse (in the old statutes, carnal knowledge) with a woman not his wife; by force or threat of force; against her will and without her consent. That is the traditional, common law definition of rape, and it remains the essence of even the most radical reform statutes." SUSAN ESTRICH, *REAL RAPE* 8 (1987).

myth that rape victims, and potentially all women, are inherently sexual, “loose” (“all women are potential prostitutes”), and deceitful. It similarly implies the myth that women’s modest protestations and complaints are disingenuous, manifesting women’s fundamental insincerity. Consequently, women, especially sexual women, and particularly women complaining of sexual assault, are impure, provocative, and untrustworthy; wishing and encouraging sexual encounters, they fabricate false accusations, faking virtue and harming their sexual partners. They are unreliable witnesses, not to be trusted.⁵³

An informed reading of *Rashomon* against Western rape myths reveals that the film echoes (and perpetuates) each and every one of them. In her summary of our culture’s most common rape myths, Helen Benedict notes the following:

Rape is Sex

This most powerful myth about rape lies at the root of all the others. It ignores the fact that rape is a physical attack, and leads to the mistaken belief that rape does not hurt the victim any more than does sex. . . .

The Assailant is Motivated by Lust

Because rape is seen as sex, the assailant is assumed to be a hot-blooded male driven beyond self-control. . . . In fact, research has shown that . . . most rapists have normal sex lives at home. . . . The motivation for rape stems most commonly from anger, the need to dominate and terrify, . . . not from pent-up sexual desire. . . .

The Assailant is Perverted or Crazy

The image of the rapist as perverted, ugly, seedy or insane contradicts the preceding hot-blooded-male myth, but it is held in reserve, as it were, for times when the sex crime is extremely grotesque. . . . Yet repeated studies have found that . . . the majority of rapists are known to their assailants. They are relatives, boyfriends, husbands. . . .

The Assailant is Usually Black or Lower Class

53. Much has been written about the bias that the influential myth of woman’s deceitful sexuality generates within the legal system and the public discourse surrounding it, and its harmful consequences in the treatment of women who suffer sexual offenses. For some fundamental works, see, e.g., HELEN BENEDICT, *VIRGIN OR VAMP: HOW THE PRESS COVERS SEX CRIMES* (1992); SUSAN BROWN MILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* (1975); ESTRICH, *supra* note 52; CATHERINE MACKINNON, *FEMINISM UNMODIFIED* (1987).

This essentially racist perception leads to the widely held misconception that most rapes are committed by black men against white women, or by lower class men against higher class women. . . .

Women Provoke Rape

Because rape is believed to be sex, victims are believed to have enticed their assailants by their looks and sexuality. . . . In fact, interviews with rapists have revealed that they barely notice the looks of their victims. . . .

Women Deserve Rape

Because rapists, like all men, are believed to find women irresistible, this myth assumes that women bring on rape by behaving carelessly prior to the crime—it was not the rapist who “caused” the rape, it was the woman who failed to prevent herself from enticing him. . . .

Only “Loose” Women Are Victimized

The myth that women invite sexual assault naturally leads to the belief that only overtly slutish women are raped. This belief denies sex crime victims their innocence, forgetting that they committed no crime. . . .⁵⁴

Benedict also lists the myths that a “sexual attack sullies the victim,” that “rape is a punishment for past deeds,” and that “women cry rape for revenge.”⁵⁵

Most of these myths are explicitly embraced by *Rashomon*'s treatment of the sexual encounter in the woods. A low-class, perverted assailant is motivated by lust; he claims that he was provoked by the woman who deserved it (for her careless behavior), and that there was no rape, only sex. The samurai later voices the opinion that the woman is loose and unworthy. The common wisdom that, having been sexually attacked, a woman is an unreliable witness, though not explicitly stated, is clearly implied in Tajomaru's testimony.

Each of the testimonies following Tajomaru's refers only to events that occurred immediately after the sexual encounter. The woman begins her story at the point after Tajomaru “took advantage” of her. The dead samurai describes the events that took place “after the bandit attacked my wife.” The woodcutter's version starts with the

54. BENEDICT, *supra* note 53, at 14-16.

55. *Id.* at 17.

outlaw sitting by the weeping woman, consoling her and asking her to join him. None offer an alternative telling of the sexual event. In other words, although none of the other characters explicitly confirm Tajomaru's account, the film does not allow any of them to present a different interpretation of the intercourse, preventing the implied viewer from seeing—or even hearing—an account constructed from a point of view other than Tajomaru's.

The underlying convention that the film invites its implied viewer to apply here is both semi-legal and cinematic. Within the adversarial mentality of the Anglo-American legal world, judges and juries are not expected to conduct their own searches for the truth but rather to decide in favor of one of the party's competing stories.⁵⁶ Even when the law does not require it, a party may be expected by jurors to refute any contested statement of fact made by his or her adversary. In this context, any statement of fact made by one party that is not explicitly contested by the other may be regarded by an Anglo-American viewer as accepted by the silent party, and therefore as indisputable within the legal proceeding. The viewer may regard it as an "objective," "neutral," given fact within the legal discussion. Although not necessarily proclaimed "absolute truth," it may be implicitly treated as such. Similarly, when a film offers several narrations of a certain event, stressing the tentative, subjective nature of each narration, but, in sharp contrast, settles for a single narration of a related event, the clear implication is that the single portrayal of the latter is undisputed within the film or by it.⁵⁷

By making Tajomaru's version the exclusive account of the sexual encounter, the film thus does not cast it into doubt, and, through legal and cinematic conventions, it discourages its implied viewer from doubting this version. Furthermore, the film presents Tajomaru's account of the sexual intercourse as an on-screen flashback, in a "show" rather than "tell" fashion, offering the implied viewer a first-hand impression, inviting him or her to feel that he or she is watching the authentic event. Seeing, of course, even for the most sophisticated viewer, is very often believing. The unmediated vision of the scene on-screen undermines the viewer's rational knowledge that this narrated text is clearly "hearsay" evidence, coming from a very suspicious source.⁵⁸ As a result of the film's

56. See HENRY J. ABRAHAM, *THE JUDICIAL PROCESS* 100 (5th ed., 1986).

57. It is easy to see why Richie would claim that "[t]he disagreement in the stories is only over the murder. All the stories of attack and rape agree." RICHIE, *FILMS*, *supra* note 17, at 72. It is inaccurate, of course, to declare that all stories "agree," but it is logical to reach this conclusion, based on the film's deliberate, manipulatively eloquent silence, which relies on and invokes the viewer's familiarity with legal and cinematic conventions.

58. Furthermore, the film actively blurs the distinction between Tajomaru's subjective point of view and the film's "authoritative" one. In Tajomaru's flashback, the woman is shot

treatment of Tajomaru's account, it is experienced not as a possible, tentative interpretation, but as a truthful, objective, absolute portrayal⁵⁹—as is the woman's discrediting.

Through its treatment of the sexual encounter, *Rashomon* thus invites its implied viewer to discredit the woman as a witness and to doubt all aspects of her testimony, both in the context of the two fictional tribunals and in the context of the film's real-life judging-act. More specifically, by presenting the woman's delight in sexual intercourse with Tajomaru, the film invites its implied viewer to suspect that after that event she was not compassionate to her husband, as her own testimony indicates, but rather eager to dispense with him, as the men's accounts suggest. Furthermore, the film associates this familiar myth with yet another myth linking woman's sexuality with "temptation," "solicitation," and her inherent guilt for men's death: the Judeo-Christian myth of "original sin."⁶⁰

THE CONVENTIONAL WISDOM: THE LOGIC AND MORAL OF THE UNDERLYING EDEN MYTH

Carrying our cultural heritage with us, we view a film through the imagery, structures, and concepts it provides. In the West, this heritage includes the influential Eden myth.

The biblical story of the "Original Sin," "Man's Fall," and "Adam and Eve in the garden" is the basis of a fundamental myth underlying Western culture to this day. The myth features three

from an angle Tajomaru could not have possibly seen her from; this confuses the viewer, linking Tajomaru's story with the camera's "objective" point of view.

59. The film's "neutralizing" acceptance of Tajomaru's account is effective enough to have convinced writers that it is an accurate description of a woman awakening to her denied, sensual "inner self." Suggesting that the film's sophisticated use of light and shadow portrays how each character "succumbed to his inner nature in a precarious situation," Keiko McDonald claims that

Masago [the woman's name in Akutagawa's story] yielded to passion though initially reason tried to suppress her impulse. Kurosawa elaborately cinematizes her moral dilemma through the juxtaposition of light and darkness. When the bandit starts kissing her, she looks straight up into the sunlight. The swift crosscutting between Masago staring up into the sun and the dazzling sunlight penetrating the branches culminates in a slow fade-out of the sun. The fade-out is immediately succeeded by a close-up of Masago closing her eyes—a gesture emblematic of her loss of reason. As she lets go of her outer nature, Masago lets go of her dagger, the means of protection that a samurai's wife characteristically carried. The camera slowly tracks up toward Tajomaru and Masago, and catches her fingers in a medium shot as her grip on Tajomaru becomes gradually tighter.

Keiko I. McDonald, *The Dialectic of Light and Darkness in Kurosawa's Rashomon*, in *RASHOMON*, *supra* note 10, at 183, 187.

60. Let me clarify that I do not claim that Kurosawa incorporated the Eden myth into his film; nor do I suggest (or deny) that the myth is part of Japanese culture, or a universal underlying myth. Strictly focusing on *Rashomon* within the Western (Anglo-American) world, I view and discuss the text as seen by its (implied) Western (Anglo-American) viewer.

characters in the primordial garden: Man, his Wife, and the unruly, sexual snake, rebelling against prevailing norms and cosmic order. The basic plot line of this myth is roughly this: Snake approaches woman, who is easily tempted; through her inherently sinful, sexual weakness and soliciting nature, she sins against the Law, bringing about the fall from grace, the end of the golden days in Eden, and Man's death.⁶¹ The moral in a nutshell is: Woman's sexual nature, combined with her weakness, untrustworthiness, and soliciting skills, bring about sin, upheaval, and Man's death. In short: Woman is inherently Guilty. Over the last two millennia, this myth and its moral have been fundamental components of Western man's conventional wisdom. It has been familiar and obvious enough to be widely conceived as a self-evident, neutral, objective truth of human nature and reality. I suggest that, relying on this Eden myth and reaffirming it, *Rashomon* is a modern day "miracle play."⁶² *Rashomon's* allegorical characters, Man, Wife, and unruly outlaw, the primordial, isolated bush that dominates the screen and the implied viewer's imagination (associating Tajomaru's masculine sexuality with trees in the bush), and the basic plot elements (temptation, betrayal, illicit sex, and death) all conspire to recreate in the implied (Western) viewer's mind's eye the mythological Eden scene and the inseparable, conventional moral.⁶³

Above and beyond superficial contradictions in detail, all four versions presented by the film adhere to the logic of the Eden myth confirming woman's Guilt. The many differences between the narratives, stressed and enhanced by the film, add to the overwhelming effect of the universal acceptance of the conventional wisdom, the moral of the Eden myth. When all else seems to be confusing, incomprehensible, and inconclusive, the film offers, at the heart of darkness, the familiar logic that seems to be the only stable ground. The implied viewer is invited to identify, apply, and embrace it, to find comfort in its consistent, solid insight. The film offers it as the only map of human nature that can make the frightening, messy reality intelligible.

61. As a result of the original sin, Man was deprived of eternal life, and cursed with hard work and mortality. Eve has been explicitly accused of bringing Death upon mankind since the days of the ancient Jewish sages.

62. For examples of medieval "miracle plays," see EVERYMAN & MEDIEVAL MIRACLE PLAYS (A.C. Crowley ed., 1993).

63. I would suggest even that Tajomaru's hissing, crawling on the ground, and exaggerated acting allude to snake imagery. When, in his own account, Tajomaru informed the woman her husband was bitten by a snake, the script adds another metaphoric link to the biblical allusion. For a reading of the film as offering an alternative interpretation of the Eden story, see *infra* Postscript, "Reading Against the Grain."

THE MYSTERY CONVENTION AND THE LOGIC OF HONOR

According to the familiar convention prevalent in mystery narratives, cumulative testimonies that appear, at first glance, hopelessly contradictory add up when approached with the right cognitive tools. In *Rashomon*, these cognitive tools seem to be the moral of the Eden myth (“woman is inherently guilty”) and the logic of honor. Reading the film against this conceptual framework, one that the implied reader is invited to embrace, reveals how the four accounts come together and offer a consistent theory.⁶⁴

A. The Woman’s Guilt in Tajomaru’s Narrative

The half-naked, unshaved, brutish-looking Tajomaru is visually associated with the clouds (when he looks up at them as the policeman testifies), with open skies (when he is shown, in a quick flashback, riding the stolen horse), with the tall (phallic) trees of the forest, with the water (which he drinks passionately), and with the sun (which is in the woman’s eye as Tajomaru kisses her). His actions are motivated by his own instincts (his sexual impulse implied by the telling postures of his sword) as well as by forces of nature (he explicitly states that heat caused him to rest, wind caused him to lust and kill, water brought about his illness). To this un/pre-civilized man, the woman—and in particular, her sexuality—is yet another powerful, irresistible natural force.

This naturalistic, pastoral portrayal of Tajomaru mitigates his moral accountability. Responding to forces of nature, Tajomaru is acting within a realm beyond good and evil. Yet his casting of the woman as a “force of nature” does not exonerate her in an analogous manner. On the contrary, it constitutes her inherent guilt. Admittedly, her first and foremost disturbing quality—her mere (sexual) existence—is beyond moral condemnation. Not so her (sexual) visibility. As long as she is properly veiled within the constraints of culture, order and peace are maintained. Only when *revealed* to Tajomaru does her (sexual) existence become the cause of misfortune. Thus it is her momentary failure to conceal herself from the world, allowing the wind to expose her dangerous (sexual) existence, that unleashes the destructive forces of Tajomaru’s sexual response.

The woman’s expressed fear for her husband’s life is constructed in Tajomaru’s story as yet another element of her inherent guilt. It was that affectionate gesture that made Tajomaru want her not merely

64. Parker Tyler remarks that “one is compelled to believe each story implicitly as it unfolds, and oddly none seem to cancel another out.” Tyler, *supra* note 49, at 153. I suggest that the cumulative effect is the reconstruction of the Eden myth.

sexually, but also emotionally. Struck by the woman's expressed compassion and capacity to love a man, the outlaw desired her emotional dedication for himself. This desire provoked his jealousy of the other man, making it necessary for him to harm her husband. Manifesting her emotions and emotional capacity, woman thus comes between men, provoking their destructive, jealous competition for her.

If the woman's (sexual) visibility triggered Tajomaru's desire and her expressed compassion aroused his jealousy, her voice and words unleashed his fatal violence. Had she stayed quiet after Tajomaru had his way with her, no harm would have come to her husband. Tajomaru would have gone his way peacefully, and no blood would have been shed. But rather than accepting her fate as the silent, guilty victim, the woman spoke, demanding that one of the men kill the other. Her active, vocal behavior, the sound of her voice, her words, caused the samurai's death.⁶⁵

B. The Woman's Guilt in Her Own Narrative

In her own testimony before the court, as narrated by the priest at the gate, the woman seems tormented by an overwhelming sense of shame and guilt. The exact significance of this expressed guilt is better understood against the cultural honor norms of the film's fictional world.⁶⁶ Samurai Japan was, and still symbolizes, a rigid honor society.⁶⁷ The samurai, the warriors, were its honor-bearing class. *Bushido*, "the way of the warrior," was the samurai's unwritten honor code. A samurai's honor was more precious to him than his life. A samurai's wife was expected to cherish her husband's honor

65. Interestingly, by immediately accepting her request for a duel, both the samurai and the outlaw seem to approve its logic and validity. Similarly, the commoner, woodcutter, and priest refrain from condemning it. The woman's fault is therefore not that she voiced the wrong request, but that she voiced one at all.

66. As the "guilt" discussed here is moral rather than purely legal, there is no contradiction between the woman's legal defense and her moral sense of guilt. Referring to the woman's "fault" from the perspective of an honor code, it is more appropriate to speak of her "shame" than of her guilt. In this particular context, especially as I read *Rashomon* in the context of Western culture, I feel "guilt" is adequate.

67. For the classic work establishing the honor-based nature of Japanese culture, see RUTH BENEDICT, *THE CHRYSANTHEMUM AND THE SWORD: PATTERNS OF JAPANESE CULTURE* (1989) (1946). For a general discussion of honor cultures and a comprehensive bibliography, see WILLIAM IAN MILLER, *HUMILIATION AND OTHER ESSAYS ON HONOR, SOCIAL DISCOMFORT AND VIOLENCE* (1993). I believe that even Western viewers who had never heard the term *bushido* are familiar enough with the basic norms of honor codes to identify *Rashomon*'s woman's shame within the conceptual frame of honor. In this, I agree with Miller's intuition, that despite the determined, systematic, official denouncement of the honor mentality within Western culture, it is still familiar, intuitive, and widespread. As he argues, honor still motivates much of our social behavior, and more so our fantasies. *See id.* at 164-65. Associating films with such fantasies, we are accustomed to seek and find honor codes in them. Westerners, as Miller shows, are an obvious example. Japanese "samurai films" are another good example.

above all else. She was to sacrifice all (including their children) to protect that honor.

For a man to watch his wife being taken by another man is among the most devastating humiliations within any honor culture, including the samurai one. It is therefore a wife's absolute duty to ensure that such humiliation does not occur. For that purpose, in Samurai Japan she is veiled, carefully educated to conceal herself, and carries a dagger, which is to be used against herself if necessary to prevent her sexual violation and her husband's ruin. Carmody explains:

[T]he bushido ideal for women made them a blend of amazon and domestic slave. First they were urged to overcome female frailty and match male's fortitude. Many young girls were trained to repress their emotions and steel themselves for the possibility of using the dagger each was given when she acceded to womanhood. The occasions for such suicide seem to have abounded. Chief among them were threats to chastity. Indeed the manuals dryly discourse on teaching girls the proper point at the throat for inserting the sword, and then on how, after insertion, to tie one's lower limbs together so as to be modest even in death. Another occasion for suicide was finding that a samurai warrior's love for her was threatening his loyalty to his lord.⁶⁸

In failing to live up to her social duty, in failing to follow exemplary, legendary models of good feminine behavior, in failing to actualize her education and careful upbringing, the "shameless" woman is guilty. In attempting to use the dagger in an external rather than internal fashion, she betrays her social role. In failing to sacrifice herself for the higher social good, she is selfish. In failing to die in time, before her illicit sexual compromise, she is guilty. Her choice to live, her survival, her life itself, constitute grave, offensive, rebellious sins against the social order and its most sacred values. Worst of all, in her failure to prevent her sexual violation, the woman betrayed her husband's honor and reputation, bringing about his ultimate shame in a culture where honor is ranked above life. It is a stain of humiliation that no later deed can fully purify. His ultimate dishonor constitutes her ultimate unpardonable guilt.⁶⁹

68. DENNIS LARDNER CARMODY, *WOMEN AND WORLD RELIGIONS* 118 (1989). Carmody offers an example of model feminine behavior: "Compromised by a powerful noble, one Lady Kesa promised to submit to his advances if he killed her samurai husband. He agreed, and she told him to steal into her bedchamber and kill the sleeper who had wet hair. Then she made sure that her husband drank enough to sleep soundly, washed her hair, and lay calmly awaiting her death." *Id.*

69. I believe that, even if unfamiliar with the exact cultural significance of the dagger, the implied viewer senses the woman's guilt in not having taken her life. Her apologetic references

The hatred that the woman claims to have read in her husband's eyes, the contempt that torments her until she nearly loses her mind, expresses (among other things) an accusation of this guilt. She does not try to dispute it; she admits to weakness and failure and asks to be relieved of her life, professing a strong sense of guilt and remorse.

Relying on deep, intuitive, conventional familiarity with honor norms, the film invites its implied viewer to embrace and apply such norms, which are thoroughly masculine and patriarchal. Furthermore, in combining the logic of honor with the moral of the Eden myth, the film grants this specific social ideology universal absolute status conventionally awarded the myth.

C. The Woman's Guilt in the Samurai's Narrative

The samurai's story completes the honor-oriented line of accusation implied in the woman's version. Choosing the only symbolic venue to redeem his lost honor, the samurai uses his wife's dagger to commit the suicide she should have committed. His act manifests how, when not used properly by the woman on herself, the dagger, representing the woman, becomes the vehicle of the man's death. Furthermore, as his wife failed to be a "good woman" and use her dagger properly, the samurai takes it upon himself to correct the social wrong done by her and to perform her role. In this he shames her, but also enhances his own shame, dying a woman's death (by a dagger), rather than a man's (by a sword). In this self-infliction of shame, he exhibits his ultimate "castration" by his wife's selfish, shameless behavior.

But the samurai adds yet another accusation. In his narrative (effectively voiced through another woman, who seems to be siding with him), he presents his wife's behavior as traitorous, hateful, and blood-thirsty. Having had sexual intercourse with the outlaw, thus freeing her sexuality from social and cultural restraints, the woman turns on him and, with a crazed hatred, demands his blood. Sexually "liberated," she betrays her loyalty, her obligation, and her love, becoming an unruly, wild threat to his very life. In the samurai's account, the woman literally becomes a *femme fatale*. Her sexuality unleashed, Eve becomes Lilith, heaven is destroyed, and all hell breaks loose.

D. The Woman's Guilt in the Woodcutter's Story

Against this honor culture's ideological background, the woodcutter's story offers an interesting, critical voice. Outside the

to her failure to commit suicide, echoed by the samurai's explicit remark in the woodcutter's story that she should kill herself, support the viewer's intuition.

bushido culture, the woodcutter does not hesitate to mock it and expose its presumptuousness and self-deception. The duel between the men, which Tajomaru describes as manly and heroic, is seen by the woodcutter as pathetic and clownish. While in his own version the samurai boasts of his brave, honorable suicide, the woodcutter depicts him begging for his life.

As a critic of the honor culture, the woodcutter could be expected to voice sympathy for the woman. Indeed, there is more compassion and sympathy in his version than in those of the other men.⁷⁰ In the woodcutter's version, the woman weeps as the outlaw demands that she marry him. Determined not to give in, she runs to her husband and releases him to fight the outlaw. And yet once both men lose interest in her and are each ready to leave her behind, she becomes more vengeful, manipulative, and active in soliciting their deadly duel than in any other version. Joan Mellen may be right in claiming that

in the final story, that of the woodcutter, the woman is the most demonic. Laughing hysterically at her predicament, she calls both men fools, attacking their manhood in order to extricate herself from a situation in which she has lost all honor. She has accepted their judgment of her, internalized it, and now flaunts her baseness. Yet the men are reluctant to fight for her, another implication of the sense of true male supremacy which suffuses this film. To provoke the fight, she must spit on Tajomaru. And he, although a bandit and a murderer, is made the better human being by Kurosawa. . . . In *Rashomon* woman is perceived as castrating female taunting competing males for not being "real men." "A woman can be won only by strength, by the strength of the swords you are wearing" she screeches near the end of the film. And it is with this view of her character that Kurosawa leaves us.⁷¹

From his position as an outsider to an honor-bound social class, the woodcutter sees the woman reaffirming the honor ideology and using its notions of honor and gender stereotypes to bring about destruction and death. The woman is therefore guilty of collaborating with a damaging social ideology and reinforcing its grip and disastrous outcomes. In so doing, she brings out the worst in the system and its warrior heroes. The samurai is reduced to a whining coward and the outlaw to a pathetic murderer. The woodcutter's version invokes the frightful image of Kirke, turning men into pigs.

70. Only the Buddhist priest, even further removed from the honor culture, expresses more compassion for the woman. His compassion is impersonal and detached.

71. JOAN MELLEN, *THE WAVES AT GENJI'S DOOR: JAPAN THROUGH ITS CINEMA* 49-50 (1976).

There is yet another layer to the woodcutter's accusation. More so than in the other men's accounts, in the woodcutter's telling the woman steps out of her self-sacrificing, feminine role. Insisting on her own honor at the expense of others, actively avenging her disgrace, she behaves in a manner that is culturally masculine. The woman is guilty of abandoning her feminine traits and acting in a masculine, honor-seeking manner. This makes her monstrous and murderous.

I claimed earlier that, despite the film's use of legal conventions to construct the woman as primary defendant, it does not supply enough "legal" evidence to convict the woman of criminal solicitation.⁷² I suggested that discrediting the woman would undermine her testimony and facilitate her conviction; the film's complex, subtextual appeal to rape myths, the Eden myth, mystery conventions, and the logic of honor does this work. Thus, by thoroughly discrediting the woman, the film assures her conviction.

The following sections examine the various contexts in which the woman is tried and convicted by exploring the film's theory of law and society and the operation of its judging-act. But before leaving the film's discrediting mechanisms, let me refer to their influence on the representation of Tajomaru.

Undermining the woman's credibility could have secured not merely her own conviction, but Tajomaru's as well, at least his conviction of manslaughter.⁷³ (This possibility lies behind Richie's matter-of-fact assumption that, as the characters speak at the gate, "wife and bandit are either in jail or executed for murder."⁷⁴) But in discrediting the woman by affirming misogynistic myths, the film offers Tajomaru a defense. Based on these myths, the woman's discrediting is inseparable from her portrayal as a natural seductress. Thus Tajomaru can be perceived as having been incited and bewitched in a way that may have prevented him from acting as a free agent, just like Adam in the garden. Recognizing Tajomaru's plight, the legal system may accord him some defense (for example, automatism, temporary insanity). If it does not, this line of defense is very likely to be acknowledged and accepted at the gate, influencing the social sentence. The myth of the woman's irresistible, inviting sexuality may exonerate him of social condemnation for the illicit sexual encounter, and the myth of her supernatural tempting powers may work to socially "acquit" the murder charge.

72. See *supra* text accompanying notes 47-49.

73. As I mentioned above, the samurai's testimony on this point seems unreliable, and both remaining versions—Tajomaru's and the woodcutter's—confirm Tajomaru's accusation. See *supra* note 48 and accompanying text.

74. RICHIE, FILMS, *supra* note 17, at 72.

THREE JUDGING CONTEXTS AND THE VIEWER'S ROLE

A. Two Fictional Judging Tribunals

In *Rashomon*, judgment is passed in three distinct yet closely related contexts. The (hypodiegetic level) narrative presents a fictional legal proceeding, judging the event in the forest. Six of the film's seven characters (all but the commoner) testify in this proceeding. Although once removed from the implied viewer, much of this narrative is presented through on-screen flashbacks, offering the viewer the sense of first-hand experience. The on-screen flashback technique undercuts the "second-hand," "hearsay" feeling this level of narrative may induce. The viewer is thereby directly implicated in the courtroom judging. Most importantly, by placing the camera in the judge's position, the viewer is explicitly offered the judge's seat and role. By not offering an on-screen judge, the film constructs the implied viewer as the exclusive judge in the film's legal proceeding.

The frame narrative (in the diegetic level) features three characters at the Rashomon Gate engaged in reviewing, analyzing, and evaluating the testimonies given both in and out of court regarding the event in the forest.⁷⁵ The three characters at the gate comprise a fictional lay tribunal, applying legal evidence, first-hand acquaintance with the case, common sense, and life experience. Two of them, the woodcutter and the priest, attended the courtroom hearings and narrate the courtroom events to themselves, as well as to the third character, the commoner, who is unfamiliar with them. The woodcutter offers another testimony, one that he did not convey in the earlier legal context. The commoner, listening to others' testimonies, contributes his common-sense input to the collective attempt to reconcile the conflicting bits of information and interpretation.

The judgment at the gate is clearly distinct from the courtroom proceeding. It takes place on a different narrative level and the setting is visibly different.⁷⁶ Yet, the courtroom proceeding triggers and structures the social process at the gate, providing it with testimonies to review and evaluate.⁷⁷ The legal proceeding is portrayed as an event that is then repeated and evaluated in social contexts, supplying material to be used in the formation of "common

75. This whole frame story and judging context is one of the film's original additions to Akutagawa's stories.

76. Kauffmann rightly notes that the noticeable differences between the sunny prison courtyard and the rainy gate stress the distinction between the judging contexts. Stanley Kauffmann, *The Impact of Rashomon*, in *RASHOMON*, *supra* note 10, at 173, 174.

77. One legal issue that is only raised at the gate, not in the courtroom, is perjury. The woodcutter accuses all the witnesses of giving false testimony.

wisdom” and moral views. Concomitantly, the film suggests that the social process at the gate also influences the legal courtroom proceeding. This influence is suggested through the implied viewer’s construction as both judge and commoner.

Within the diegetic level, the implied viewer is associated with the commoner.⁷⁸ Like the commoner, the implied viewer was not present at the court, is uninvolved and therefore allegedly “neutral” and “objective” in his approach. Also, like the commoner, the implied viewer is interested in the story as a source of entertainment told to pass an evening. At the outset, justifying the film’s retelling of the courtroom event, the woodcutter appeals to the commoner to make sense of the case, simultaneously addressing the implied viewer with the same request. This request asks the commoner and the implied viewer to pass judgment and reach a decision regarding the case. Sitting in as the fictional tribunal’s judge, the viewer brings to the legal position the commoner’s “conventional wisdom” and “common sense.” Constructing the implied viewer as both judge and commoner, the film suggests that the community’s world-view enters the professional legal world through the judge’s character. Through the implied viewer, the commoner’s beliefs, such as the idea that women use tears manipulatively and cannot be trusted, are transferred to the judge, suggesting that social conventions that influence the social judging process may similarly influence the legal proceeding.

The portrayal of the two fictional “tribunals” and their respective positioning imply additional cinematic law and society commentary. The legal proceeding in the courtyard takes place in a formal, sterile atmosphere. The courtyard is bare, the witnesses are frozen, and their speech is restrained by the norms of the legal ritual and their fear of the authorities; the weather is mild and uneventful. Unlike the formal courtyard proceeding, the judgment at the gate is not distinct and detached from the human reality it examines. In clear contrast, this judgment is inseparable from the characters’ dynamic, emotional, temperamental behavior. It is passionate, personal, involved, and deeply human. Accordingly, the weather is stormy, dramatic, and expressive. In fact, the downpour is so overwhelming as to invite (in the implied Western viewer) association with the biblical flood. If the event in the wood echoes the primal Fall, the scene at the gate seems its natural extension, taking place while heaven attempts to cleanse the earth of human evil. In this context, the location of the social judging process acquires unique symbolic value. First, the decaying gate connotes the deteriorating social order

78. The commoner is another one of the film’s original additions to Akutagawa’s stories.

and moral norms. Like the crumbling gate, social standards seem to be losing their reassuring hold. It is on the verge of anarchy and chaos that the group at the gate engages in the social act of judgment. In the face of despair, this courageous search for truth and justice is both existential and heroic. Unlike the formalistic legal proceeding, this social action is a community's struggle to maintain moral norms and its very existence. It is an act of hope and faith. Appropriately, this act, unlike a typical legal proceeding, does not end in condemnation but rather in humble confession, sacrifice, forgiveness, redemption, reconciliation, and human bonding. These developments appease the gods; when judgment is complemented by manifestations of remorse and compassion, the rain stops and the world is renewed. The formal legal event pales in comparison.

The gate's second symbolic significance is associated with the historic role of city gates in communities' social lives. In traditional societies, including the biblical one, elders, prophets, judges, and kings sat at the city gate, discussing, judging, and executing.⁷⁹ Far from mere formality, this judging act was at the heart of social life, reflecting the community's moral values and social order. Situated at the city gate, it is the little *Rashomon* community, not the legal community in the courtyard, that is engaged in an age-old tradition of social self-creation and renewal.

In *Rashomon*, the fictional legal and social judgments are closely related, but it is clearly the judgment at the gate that is portrayed as fulfilling the more meaningful social task. The formal legal proceeding is but a means to supply the men at the gate with testimony and a clear frame of reference for their social process; it is a public spectacle in the service of the social process of self-creation. It is not surprising that the film does not bother to supply the relevant legal accusation or judicial decision; the legal proceeding is only interesting as a means for social action, not in its own right. In light of this precedence of the judgment at the gate, the film's epilogue, which I discuss below,⁸⁰ carries special weight.

79. Recall, for example, *Amos* 5:15: "Hate the evil, and love the good, and establish judgment in the gate." Similarly, *Deuteronomy* 21:23-24 determines that

[i]f a damsel that is a virgin be betrothed unto a husband and a man find her in the city and lie with her; Then ye shall bring them both out unto the gate of the city and ye shall stone them with stones that they die. The damsel because she cried not, being in the city, and the man because he hath humbled his neighbour's wife.

Interestingly, in reference to the situation discussed by the film, biblical law determines that "[i]f a man be found lying with a woman married to an husband, then they shall both of them die, both the man that lay with the woman and the woman. . . ." *Id.* at 22:22. The Canonic text clearly does not distinguish between rape and sex, assuming a woman's responsibility for any sexual encounter in which she is involved.

80. See *infra* text accompanying notes 83-91.

B. The Film's Judging-Act

The film's third judging process, which I named its "judging-act," takes place at the extradiegetic level. I prefer to refer to it as conducted by the film as "text." It is within this judging process that the implied viewer is presented with four central testimonies and is invited to rely on legal conventions and underlying familiar "common wisdom" to construct the woman as the film's primary defendant, discredit her, and find her guilty. Like any story, the two fictional judging stories may influence real-life people and social conceptions. But it is the film's (extradiegetic) judging-act, most carefully concealed, that is likely to be most influential. It is in this context that the real viewer's identification with the film's implied viewer is most consequential.

In the film's judging-act, the implied viewer is invited to participate in the judgment. The implied viewer's association with the film's fictional judge, combined with the legal conventions that the implied viewer is requested to apply within the judging-act, construct the film's judging-act as quasi-legal. The viewer's association with the commoner, together with the commoner's role in the film's judging-act, add a social common-sense aspect to the film's judging-act.

Richie aptly describes the commoner as the film's "chorus."⁸¹ This view of the character associates *Rashomon* with classical Greek tragedy, implying that the characters' hubris brought about their own doom. This perspective points to the inevitability of the outcomes, both in the forest and in the courtroom, subtly questioning the project of judging and responsibility-attributing with which the film is so preoccupied. Richie's description also acknowledges that, more than a character at the gate, the commoner fills an important function conveying the film's message. From a more legalistic point of view, I suggest substituting "jury" for "chorus." A jury, composed of actual, "reasonable" lay-people, is expected to voice the community's common sense within the common-law legal process. Beyond legal and legalistic restraints, it is entrusted with delivering the verdict.

The commoner is a shrewd, perceptive, insightful character. His views, sometimes highly cynical, unsettling, and painful, are accepted by both woodcutter and priest as the community's conventional wisdom. This acceptance establishes the commoner as the fictional community's appropriate jury. Expressing the fictional society's common wisdom, as well as the film's own, the commoner—as the film's jury—is likely to discredit the woman's testimony and find her

81. RICHIE, FILMS, *supra* note 17, at 71.

guilty. The implied viewer is invited both to identify the commoner as the film's jury and share the decision making with him.

Participating in the film's judging-act, the implied viewer is associated with yet another judging image: the all-seeing God. Most of the testimonies relating the event in the forest are narrated as hearsay. But once again, the film's choice to use the on-screen flashback technique to present the viewer with most of these stories undercuts the mediating effect, offering the viewer a seemingly direct impression of the narrated events. In this manner, the viewer enjoys fuller, more direct contact with the witnesses' stories than any living judge. By seeing the witnesses' stories (rather than hearing them, as a judge would), the viewer is offered a glimpse into their souls, their memories, their deepest inner selves.

I suggested earlier that the Eden myth consists of three characters: Man, Wife, and snake. More accurately, it includes a fourth character: the all-seeing, judging God. From his superior position, enabling him to see into the hearts of humans, God summons man, wife, and snake, putting all three on trial, convicting and punishing each one. I suggest that, within the film's judging-act, the viewer is associated with the judging God. In this position, any decision the viewer reaches becomes "natural law" and cosmic, absolute justice. Through the association with God and "natural law," the film's world-view is elevated to the status of absolute truth.⁸² The allusion to God's judgment in the Eden trial invites the implied viewer to convict all three: the outlaw/snake of tempting, the woman of cooperating with the seducer and soliciting a crime, and the man of weakness of character.

C. The Epilogue

The film's epilogue, one of the film's original additions to Akutagawa's short stories, is widely regarded as superfluous.⁸³ I suggest that, on the contrary, in the context of the film's judging-act, the epilogue is a fitting, predictable verdict.

With the baby's appearance, the three characters at the gate are transformed from mere commentators, passing judgment on the

82. A short vision corroborates this interpretation. Relating her plight after the event, the woman reports that she failed in her attempt to drown herself in a pond. A quick on-screen flashback presents a body of fresh water, bringing to a Western mind the medieval trial by water. This natural body of pure water refused to accept the woman, thereby implying her guilt under the law of nature. One other water allusion is interesting in this context. Tajomaru blames his illness on bad water he had drunk at the brook. In many mythologies, water is associated with femininity. See MARIJA GIMBUTAS, *THE LANGUAGE OF THE GODDESS* 1-62 (1991). The suggestion that drinking from the well of bad femininity caused Tajomaru's downfall reinforces the natural, cosmic judgment of woman and womanhood.

83. See, e.g., Barbarow, *supra* note 50, at 147; Tyler, *supra* note 49, at 155.

events narrated, to participants in an event echoing the event in the forest. Presented with an opportunity to satisfy his needs by depriving another of his rightful possession, the commoner seizes the baby's coat, arguing that all men are selfish and cannot survive otherwise. This self-serving, dehumanizing act is analogous to Tajomaru's sexual taking of the woman in the first event.⁸⁴

The commoner's immoral behavior disconcerts the implied viewer. Having identified with the commoner, the viewer suddenly finds his⁸⁵ literary "double" behaving selfishly and thereby associated with the outlaw. This is a brave criticism aimed by the film at the unsuspecting viewer, now forced to confront his image in the mirror and take a moral stand. The film itself leaves no doubt, at this point, as to its moral condemnation of the commoner and his cynical, self-serving philosophy. It does not deny that the commoner and Tajomaru, do, in fact, represent society, its world-view and morals. Yet, distinguishing "is" from "ought," the epilogue criticizes the existing social order, expressing hope and confidence that a new, better world can and will exist.

Struggling with the woodcutter over the baby's coat, the commoner justifies his act, comparing it to the actions of baby's parents: "They had their fun, then they threw it away. That's evil!" In this accusation, he condemns not only the baby's father, but also the mother for "having fun" and then refusing to take responsibility for the outcome. The accused woman, the samurai's wife, comes to mind. She, too, may now be impregnated by Tajomaru, and nine months later be confronted with an unwanted baby. The baby's mother could have been Tajomaru's previous victim, i.e., the literary double of the samurai's wife.⁸⁶ The film's only woman, generic, allegorical, unnamed, is thus associated with this baby's mother. In determining that the baby's mother "had her fun," the commoner echoes and reaffirms Tajomaru's view of the sexual intercourse in the forest, adhering to the myth of women's secret desire to be raped and sealing the woman's guilt. Furthermore, if so far the woman has been accused of being a bad wife, the commoner now adds the accusation that she is also, potentially, a bad mother, selfishly sacrificing not only her husband but also her child. In not offering an alternative view of the baby's mother, the film, yet again, quietly consents.⁸⁷

84. The commoner's naked upper body stresses this analogy.

85. I use the masculine, as, by now, I think it is clear that the film constitutes its viewer as a man.

86. I am grateful to Andrew Frumovitz for making this point in class discussion.

87. The best argument the woodcutter can think to make on behalf of the abandoning mother is that she left the child an amulet to protect it.

As Tajomaru left a devastated couple in the central event,⁸⁸ so the commoner leaves the two men at the gate. Much as Tajomaru exposed the woman's weakness and guilt, so the commoner exposed the woodcutter's. The two men left at the gate stand in painful, awkward silence, the woodcutter's guilt looming large between them. But, unlike the original couple, they find a way to reconcile. Unlike the samurai (in the women's and the woodcutter's versions), the compassionate, loving priest finds it in his heart to forgive the woodcutter, to trust him, and to offer him a second chance. Unlike the woman (in the men's versions), the woodcutter does not attempt to take away from the baby and the priest what little the commoner left them (life, a few clothes, and a little trust, corresponding to the samurai's life and hope for a future). Unlike the woman, the woodcutter fully acknowledges his shame, seizing the opportunity to redeem himself, to cleanse his guilt, and to appease the priest, himself, and the viewer.⁸⁹ A second wedding vow is made.⁹⁰ Appropriately, the rain ceases, the sun shines softly, accompanied by a moving soundtrack, and the two men, the film, and the viewers are all released at the deteriorating haunted gate to follow the glowing woodcutter and the peaceful baby (out of the limbo-like ark and) into life and future. Having redeemed the horrors of the sinful couple, the new family can now reenter life.

It seems that Tajomaru and the commoner are condemned for their selfish behavior—each of them treated another person as a means to his own end. The samurai is condemned for his honor, pride, lack of compassion, and inability to forgive. The woman is condemned for having enjoyed the sexual encounter, for being a bad mother (and woman), and for not redeeming her guilt. She may also be condemned for taking what little Tajomaru left the samurai. The epilogue's utopian future replaces all four fallen characters with the trusting, innocent, compassionate priest, the redeemed woodcutter, and the innocent baby.

Strikingly, in this uplifting vision of a reformed world, women are missing. As the meek, compassionate Buddhist priest replaces the honor-driven samurai, the woodcutter replaces the woman. Carrying the baby, he is the film's new improved mother. Woman herself is

88. This devastation is best portrayed in the woman's version, but it is present, metaphorically, in all versions.

89. Tadao Sato suggests that the film's moral is that "[o]nly a consciousness of shame can restore beauty to the individual who has lost it. To be conscious of shame is the same as self-respect." Tadao Sato, *Rashomon*, in *RASHOMON*, *supra* note 10, at 167, 172. Apparently, the woman does not achieve self-respect; the woodcutter does.

90. In Christian theology, Jesus, the second Adam, and Mary, the second Eve, redeem the sin of the original couple and its Fall. Similarly, this second couple at the gate offers a better, alternative ending to the tale of samurai and wife.

not redeemed, and has no place in the film's utopian future society. Honor culture, selfishness, and cynicism are all condemned, but not so misogyny, and the viewer is not invited to rethink misogynist attitudes invoked in earlier stages of the film.

Throughout the film, the characters' weapons are explicitly constructed in a metonymic manner. The very long close-up shot of the woodcutter's ax, as he walks through the bush, the many careful, phallic shots of both the outlaw's and the samurai's swords, and the focus on the woman's dagger each identify the characters with their respective knives. During intercourse with the outlaw (as presented on-screen), the woman lets go of her dagger, and her femininity is lost to her. When, in her own later narration, she tries to reclaim it, she finds that she cannot. Despite her efforts, she is unable to regain the dagger and thus her ability to use it properly (on herself). Lost to the woman, the dagger is claimed by the samurai (in his own, later account). Taking on the woman's weapon and her social role, the samurai uses the dagger on himself. But, contaminated by the woman's guilt, the dagger can only cause wrongful death and humiliation (the samurai's shameful feminization). The samurai's act of honor and despair hardly redeems the dagger or the tainted femininity it represents. In stealing the dagger, coming into contact with contaminated femininity, the woodcutter, too, is stained. But unlike the woman's and the samurai's behaviors, his self-sacrificing adoption of the baby is an act of true femininity. He thus redeems himself, dagger, and womanhood, becoming the good mother. This new woman and mother is humble, caring, and self-sacrificing. It is also a man, free of the dangerous threatening female sexuality that precipitated the whole unhappy series of events. The woodcutter is an improved version of Mary, the asexual, idyllic mother.

To conclude with yet another theological allusion, *Rashomon's* epilogue leaves us with a vision of a masculine Trinity: Father (woodcutter), Son (baby), and Holy Priest.⁹¹ Accustomed to the masculinity of holy ruling trinities, we tend to be blind to their gender and its significance. Nevertheless, like the judging community at the gate, this holy community's gender is, of course, not value-free. Significantly, the epilogue's holy trinity is not supplemented by a virgin mother or any other notion of femininity. Motherhood is fully appropriated and merged into the male father figure.

D. Applying the Film's Theory to Itself

After examining the film's subtextual judging-act, permeated with

91. I am grateful to Maya Steinitz for this contribution.

the film's underlying "conventional wisdom," it is enlightening to apply the film's theory of the interrelations between law and society to itself. Analyzed in this light, *Rashomon* portrays how, as a cultural product, even a skeptical, critical film can be saturated with conventional social views as well as conventional legal logic. In turn, such a film can invoke and reinforce its underlying traditional, conservative notions and stereotypes. Inviting its viewers to participate in a cultural, cinematic judging-act, implicitly invoking their legal intuition and common sense, the film uncritically associates and reaffirms both. In so doing, it participates in the socio-cultural process of creating "conventional wisdom" and common sense, influencing judges and juries, and facilitating the relations between them. Its allegedly skeptical stance effectively conceals its complex operation. In view of the film's own implied hierarchy, such socio-cultural judging and educating functions may be far more influential and socially meaningful than any formal legalistic decision reached by a court of law.

THE UNTOLD STORY AND THE JUDGING COMMUNITY OF MEN

There is yet another way in which *Rashomon* reveals the power law and culture have on the social creation of meaning and truth. *Rashomon* exemplifies how law and culture can exclude stories from participating in the social construction of meaning, thus denying such potential stories and their morals the opportunity to be socially heard, considered, judged, or even created.

In focusing attention and energy on courtroom and out-of-court stories and their conflicting details, the film diverts attention from those potential stories that are *not* told in its fictional judging contexts or its judging-act. Untold, "inadmissible" stories are those that do not conform to screening standards at the entrances to legal, social, and cultural discourse. Were they formulated and told, such stories could give voice to the repressed, the social "others." Their absence allows law, society, and culture to look past such social elements and neither see nor hear them. Sharing its fictional legal and social forums' norms, *Rashomon* silences such stories.

Rashomon's most obvious untold story is the woman's, as it could have been told had she been allowed the tools to compose it and the voice to speak it. If told, this could have been a story of her loneliness, seclusion, discrimination, suppression, demonization, rape, and abuse.⁹² But the film chooses not to tell the story of the

92. Akutagawa's story *In the Grove* suggests another untold story: Tajomaru's as a social rebel. In the short story, Tajomaru accuses his judges: "Am I the only one who kills people? You, you don't use your swords. You kill people with your power, with your money."

woman's fear, pain, and suffering before, during, and after the sexual attack. Her hurt, denigration, violation, betrayal, despair, and loss are never given utterance. The woman may have experienced some or all of these feelings; the "facts" presented by the film give rise to such a possibility. Yet no such story is told.

In all the film's narration levels and in all its judging contexts, the main story is of a man's victimization.⁹³ In the hypodiegetic level, in the fictional legal proceeding, the questions and answers refer to the samurai's death; the witnesses are not asked to narrate the rape, as the legal tribunal is not seeking evidence that would allow a discussion of it.⁹⁴ Tajomaru is the only one who chooses to address the rape as a relevant circumstance that (proves his manliness and) explains his testimony regarding the woman's criminal solicitation. The legal system's blindness to the rape as an offense worthy of discussion has far-reaching results. Above all, the woman is not construed as a victim of a criminal offense, and no attempt is made to define her victimization as a social wrong or to redress her injury. Second, within the criminal proceeding regarding the man's death, the woman, not viewed as a victim, cannot rely on her victimization to claim a defense, such as a post-traumatic state of mind.⁹⁵ Neither can she claim that the samurai's abuse after the rape constituted provocation, or that she acted in self-defense. Additionally, the social discussion, taking its cue from the legal proceeding, dismisses the rape as well, focusing on the man's death. Accordingly at the gate, when discussing the social significance of the event, the film's most reliable character, the priest, declares: "A man has been murdered." He continues to stress the horror of this crime, unparalleled by any other, and does not dedicate a single word to the woman's rape. Unseen and unspoken by legal and social tribunals, the rape is easily denied by the rapist and explained through underlying misogynistic myths.

The film does nothing to facilitate the telling of the rape. The legal

Sometimes you kill them on the pretext of working for their good. . . . It's hard to say who is the greater sinner, you or me." AKUTAGAWA, *supra* note 14, at 23. This subversive story is omitted in the film.

93. Not surprisingly, Tyler echoes this focus when he summarizes the event by stating that the outlaw "tricks the man, ties him up, and forces him to witness his wife's violation." Her violation is perceived only as part of his victimization. Tyler, *supra* note 49, at 153.

94. In Medine's article on the legal aspects of this film, he states that "we simply do not know who should be convicted for the woman's rape and the man's death." David Medine, *Law and Kurosawa's Rashomon*, 20 LITERATURE FILM Q. 55, 59 (1992). I can think of only one explanation for this opaque sentence: The sentence originally referred to the death alone and, as a last-minute gesture, the author added the rape. Indeed, the film clearly invites this forgetfulness.

95. Accepting the film's denial of the woman's rape, Tyler suggests that "[a]ll of the participants are suffering from shock: the warrior's agonized ghost, his hysterical wife, the bandit . . ." Tyler, *supra* note 49, at 153.

convention it invokes constructs the woman as the cause of a man's death and not as a victim. Furthermore, despite its isolation of the woman in all levels of narration, despite her subjection to two tribunals composed exclusively of men, the film neutralizes the men's gender and the masculinity of the judging community. The acts of judging the woman and silencing her story constitute the men on-screen as a judging, masculine community. Yet, by neutralizing the men's gender the film prevents the viewer from suspecting that the judging community is masculine and that masculine screening norms may be silencing the woman's story, thereby luring the viewer to join the masculine community on-screen.

The man's death and the woman's guilt are judged, throughout the film, by five on-screen male characters (joined by the unseen male judge), who constitute the film's fictional community. Each of these male characters reviews and evaluates the woman's behavior and moral character. Sharing and legitimizing each other's masculine point of view, masculine life experience, and masculine common sense, their judgment of the rape, the death, and the woman is very much gender-based. At the same time, neither the woman nor any of the men or events are interpreted or judged by any female character, from a woman's point of view. The woman is not invited to accuse or judge but merely to defend herself, and no other woman exists within the film's fictional world. The other female body in the film's fictional world speaks the dead samurai's voice, hatefully condemning the woman.⁹⁶ The only other woman who appeared in Akutagawa's story, the woman's mother who testified to her daughter's impeccable moral character, is the only original character missing from the film. Her testimony must have been considered "irrelevant," hence inadmissible. None of this is acknowledged by the film.

Each of the film's male characters is portrayed as a generic, allegorical representative of a professional and social class: The samurai stands for the warriors, the woodcutter for the working class, Tajomaru for the outlaws, and the priest for the church. Stressing their different social affiliations, the film blurs their common gender. Stressing their differing social points of view, the film does not acknowledge the predominance of their underlying bond. The men are thus never presented as a gender-based group, sharing a common interest as well as a common bias in relation to the woman, the rape, and her experience of it.

The woman, on the other hand, as a single, generic woman, does

96. The visual appearance of the feminine body actually makes this condemnation even more powerful, as if it *were* being made by both the samurai and the woman.

become the allegorical “everywoman,” Eve. Unlike the men, she is presented as “woman,” a gender-based class, and “wife”: a man’s woman. “Woman” is in fact on trial before a community of men who share men’s reason, perceptions, and anxieties regarding women and womanhood. It is this community that the implied viewer is invited to join as another judging man, yet the film’s community is presented as “human” rather than “masculine.” Just as the impact of the judging men’s gender cannot be articulated before the film’s court of law or judging community, and is inadmissible in both the (fictional) legal and social discourses, so it is also excluded by the film’s judging-act.

While depicting how the process of passing judgment (over a woman) facilitates the creation of a (masculine) community on-screen, *Rashomon* also mirrors this phenomenon, illustrating how (a judging) film similarly creates a community of men offscreen. *Rashomon*’s judging-act blurs the distinction between men on and off screen, inviting them all to participate in a single masculine judging community. Associated with the film’s fictional judge and community of “reasonable men,” the viewer is seduced into sympathizing with the film’s fictional judgments and actively participating in the text’s judging-act. Denied the opportunity to hear the woman’s untold story, the viewer is implicated and turned into an accomplice in the silencing conspiracy that reaffirms the masculine community. The viewer is trained not to hear untold, undesirable stories but rather to pass judgment based exclusively on those deemed legitimate. The film’s active silencing denies the viewer the opportunity to realize the potential existence of such voices. And, as suggested by the film itself, the social significance of such a socio-cultural-legal silencing is powerful indeed.

It is interesting to note that the original, medieval Japanese tale consisted only of a woman’s rape and not a man’s death. Having raped the woman, the outlaw leaves, and the woman, supported by the text, accuses her husband of a greed that caused her violation.⁹⁷ In contrast, Richie reports the following anecdote: “Once asked why he thought that *Rashomon* had become so popular, both in Japan and abroad, [Kurosawa] answered: ‘[W]ell, you see. . . it’s about this rape.’ Everyone laughed”⁹⁸

CONCLUSION

Fifty years after its production, *Rashomon* is still familiar and

97. See GOODWIN, *supra* note 13, at 199-20.

98. RICHIE, FILMS, *supra* note 17, at 75.

available at any video store. I suspect that many viewers are still capable of taking on the role offered through the film's implied viewer. More significantly, at the beginning of the twenty-first century, we are bombarded with both factual and fictional media references to society and law. Any one of the endless courtroom dramas filling the air in prime time, carefully analyzed, can probably be revealed as a "Rashomon" in the deep sense of the title—preferring certain stories to others, inviting the viewer to participate in a semi-conscious judging-act and to join a certain socio-ideological community, training the viewer not to hear certain voices and their stories, and invoking in the viewer specific social beliefs (usually traditional and stereotypical). Similarly, any news coverage of a real-life trial, including interviews ("out-of-court," "at-the-gate" testimonies), analyses (such as the commoner's), and "field reports" ("on-screen flashbacks"), reenacts *Rashomon*.

Therefore, fifty years after its production, *Rashomon*'s message is as relevant as ever. Both law and society still need to be aware and critical of the potential influence of cultural texts on law, society, and the making of "conventional wisdom" and common sense. Law still needs to be aware and critical of the "conventional wisdom" and common sense introduced into legal proceedings by juries and judges, to be sensitive to untold stories and screening norms and the consequences of unrecognized wrongs.

Finally, at the outset of this discussion I suggested that society and the legal world often share *Rashomon*'s manifest preoccupation with contradictory evidence, ignoring underlying socio-cultural values and mechanisms that determine the legal discussion and its range of possible decisions. I claimed that a reading of *Rashomon* is therefore also more generally a reading of social and legal blindness. Now that I have offered a close analysis of the film, let me restate this point. The legal discourse tends to engage itself with specifics and details; the compatibility of witnesses' testimony and the determination of the facts often occupy significant portions of the legal world's time, effort, and energy. As my reading of *Rashomon* demonstrates, such preoccupation is far from being "neutral," "objective," or "purely professional." It distracts attention from issues such as underlying social stereotypes, screening mechanisms that preclude "illegitimate stories," and the unconscious construction of the judging community as a community of men. It thus acts as a conservative force, discouraging reflection, awareness, and willingness to change.

POSTSCRIPT: READING AGAINST THE GRAIN

Having read *Rashomon* critically, I would like to conclude by

suggesting an alternative strategy: reading it against the grain. It seems only right to conclude a discussion of *Rashomon*'s underlying, absolute message with a counter-reading of the text, deconstructing my own reading and redeeming the film's manifest message. Thus, read against the grain, *Rashomon* is a story of men's weakness, selfishness, and greediness and a woman's courageous resistance and survival against all odds.⁹⁹

In *Rashomon*, men are self-serving and inconsiderate of others' needs. They treat woman as property, objectifying and commodifying her. They see her value only in each other's eyes: Only at the sight of her fear for her husband does Tajomaru want her for himself, and only in the arms of Tajomaru does the samurai see his wife's beauty. Once one man expresses disinterest in her so does the other.

Woman in *Rashomon* is oppressed, isolated, and silenced. And yet, despite a thoroughly hostile environment, she resists and survives. Physically attacked, she fights for her life and autonomy; overpowered and violated, she does not give in but chooses to pull herself together and go on. Always emotional, well in touch with her feelings, she is thoroughly human. Approaching her husband after her violation, she is able to forgive him, feel compassion for his suffering, and offer him intimacy and support in the depth of despair. Faced with his betrayal, she has no words to express her pain and accusation, no voice to speak her words, no community to share experiences; yet she does not surrender. Faced only with a system of meaning that dismisses and dehumanizes her, she maintains her dignity by manipulating the system and turning it against itself. Above all, in spite of her loneliness, victimization, and cruel condemnation, in spite of the explicit demand that she sacrifice herself for others, she chooses life. She refuses to die, to be silenced, and to be concealed. She resists and survives.

By using the powerful image of the medium, the film calls

99. Some readers of earlier drafts commented that they had seen the film as conveying the unconventional gender narrative of excluded voices that I claim can be found only when we read the film against itself. The easy answers are that we each compose our own story of *Rashomon*, much like its fictional characters and that, as a rich text, *Rashomon* conveys several messages. I do believe, however, that comprehensive textual reading of the film and its reviews supports my interpretation of it. I suggest that when they viewed the film, my friends resisted the film's invitation to take on the role of its implied viewer. Bringing to the film a different set of values, they saw its potential critical message. I hope that some day our Western "conventional wisdom" and "common sense" will have changed so that my reading of the film will no longer be intuitively comprehensible. I have so far taught *Rashomon* four times as part of a seminar on Women and Law in Film Around the World; three times at the Hebrew University in Jerusalem, Israel (in 1997, 1998, and 1999) and once (in 1999) at the University of Michigan in Ann Arbor. Unlike Sokolow's students, *see supra* note 9, at 981, my students were fascinated with the film, but their initial responses testified that the day has not yet come when its patriarchal, silencing message is incomprehensible.

attention to woman's silenced voice in a male supremacist world. The medium has a woman's body, yet she speaks the samurai's words, in his own voice, presenting his point of view and serving his interests (at the expense of his wife's). In service of the system (the legal authorities judging a woman), the medium is a woman's body telling a man's story in his own voice.¹⁰⁰

Although the two actresses, Machiko Kyo and Fumiko Homma, may not resemble each other physically, they are both made up to such a degree that it is almost hard to tell them apart (this is particularly so for the Western viewer). Their faces are whitened, and their eyebrows are plucked, as their culture's code dictates, imposing and stressing the similarities between them—constructing each and both as “woman.” And, indeed, much as the medium (a female body) speaks with a man's voice, telling his story, accepting his truth and serving his interests (even at a woman's expense), so does the woman. She lends her body and mouth to the ruling social class, but this does not make either the voice she produces or the story she tells “her own.”

Rashomon is a new, revolutionary retelling of the ancient Eden myth. In *Rashomon*'s tale, it is man who is easily tempted by the lurking male snake, who offers him more phallic, deadly toys than he needs. Man's greed, his self-assuredness, weakness, and irresponsibility lead to his temptation and fall. Leaving woman to be victimized by another self-serving man, he refuses to accept responsibility, blaming his own misfortune, as well as the woman's, on her. Proud, he is unable to accept her compassion and forgiveness, nor offer her support, thus destroying hope for intimacy and closeness.

In Kurosawa's epilogue, the samurai, representing honor-based manhood, is replaced with the asexual priest. Feminine values of love, compassion, and motherhood are portrayed as the way to a better world.

100. To better understand the specific cultural context, it is interesting to note that in early periods of Japan's history, women performed central religious and ritualistic functions. In the middle ages they were stripped of all such roles. Nevertheless

rural Japan has never lost the presence and impact of shamanesses. Working with a blend of folk beliefs, Shinto and Buddhism, these women have continued to function as mediums and diviners Traditionally, the shamanesses tended to travel in bands of five or six, walking a regular rounds of villages. They would tell fortunes, pray for the sick, contact the dead The bands no longer travel, in part because the authorities, who always resented them, and often defamed them as prostitutes, finally tended to prevail.

See CARMODY, *supra* note 68, at 119. The medium, a debased female priestess, suspected of illicit sexual behavior, is here reduced to serving the patriarchal authorities and a husband who accuses his wife.