

2000

Nomos and Cinema Symposium: Law and Popular Culture

Richard K. Sherwin
New York Law School

Follow this and additional works at: http://digitalcommons.nyls.edu/fac_articles_chapters

Recommended Citation

48 UCLA L. Rev. 1519 (2000-2001)

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Articles & Chapters by an authorized administrator of DigitalCommons@NYLS.

NOMOS AND CINEMA

Richard K. Sherwin *

*Today we have law on the books, law in action, and now, law in the image. . . . Law lives in images that today saturate our culture and that have a power all their own.*¹

What does it mean to say law lives in the image? One may offer several responses. First, in a pragmatic sense, the practice of law today increasingly makes use of visual images. Visual evidence at trial includes day-in-the-life videos, digital graphics, accident and crime reconstructions, as well as long-distance testimony via closed-circuit television.² The proliferation of visual surveillance—from police vehicles and security cameras to amateur videos—has also made its mark inside the courtroom. One need only call to mind the defense's sophisticated digital reconstruction of George Holliday's fortuitously captured images of Los Angeles police officers beating Rodney King.³ Even legal argument has taken to the screen. In a growing number of trials videos are being used as part of closing argument. In one case a video replaced oral argument altogether.⁴

Law lives in images. We make sense of reality by drawing upon the stories and storytelling modes that are most familiar to us.⁵ And these days,

* Professor of Law, New York Law School. I would like to thank Michael Asimow, Paul Bergman, and the *UCLA Law Review* for the opportunity to participate in a stimulating and well-organized conference on a subject of growing significance.

1. Austin Sarat, *Imagining the Law of the Father: Loss, Dread, and Mourning in The Sweet Hereafter*, 34 *LAW & SOC'Y REV.* 3, 9, 39 (2000).

2. See Richard K. Sherwin, *Law/Media/Culture: Legal Meaning in the Age of Images*, 43 *N.Y.L. SCH. L. REV.* 653, 653–54 (1999–2000).

3. See RICHARD K. SHERWIN, *WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE* 272 n.38 (2000) (describing the defense's digital reorchestration of George Holliday's videotape to persuade jurors that Rodney King's movements "caused" Los Angeles police officers to strike him with their batons); see also Richard K. Sherwin, *The Narrative Construction of Legal Reality*, 18 *VT. L. REV.* 681, 691 (1994).

4. See *Standard Chartered PLC v. Price Waterhouse*, No. CV 88-34414 (Super. Ct. Maricopa Co., Ariz. 1989).

5. See, e.g., JEROME BRUNER, *ACTS OF MEANING* 80 (1990) ("[W]hile we have an 'innate' and primitive predisposition to narrative organization that allows us quickly and easily to comprehend and use it, the culture soon equips us . . . through its tool kit and through the traditions of telling and interpreting in which we soon come to participate."); HAYDEN WHITE, *TROPICS OF DISCOURSE* 60 (1978):

What the historian must bring to his consideration of the record are general notions of the *kinds of stories* that might be found there, just as he must bring to consideration of the

television and film are by far the most popular sources of the stories and story forms that we all know.⁶ It should hardly prove surprising to find trial lawyers importing popular film stories and characters as well as familiar cinematic styles into their courtroom performances. For example, Oliver Stone's *Natural Born Killers*⁷ served, in different ways, both the prosecutor and the defense in a recent Georgia murder case.⁸ Francis Ford Coppola's malevolent organized crime characters from *The Godfather*⁹ have served more than one prosecuting attorney.¹⁰ And in one complex organized crime case a defense attorney skillfully used a humorous and surreal cinematic storytelling style to transform his "mafia wannabe" client into a harmless buffoon.¹¹ It was like watching a Quentin Tarantino movie,¹² or a scene from the comedic imagination of Woody Allen.¹³

Popular images of lawyers, criminals, and the legal system help people to understand, or think they understand, the reality these images depict. Whether accurate or not, these are the images that people carry around in their heads.¹⁴ When they come into court these are the images that they bring with them. For good or for ill, trial lawyers will have to work with, or around, the images that circulate within the popular imagination. And to

problem of narrative representation some notion of the "pre-generic plot-structure" by which the story he tells is endowed with formal coherency. In other words, the historian must draw upon a fund of culturally provided *mythoi* in order to constitute the facts as figuring a story of a particular kind

Id.

6. See Gregor Goethals, *The Electronic Gold Calf*, in VIDEO ICONS & VALUES 64 (1991): Television tells stories that are readily identifiable and offer reassurance; they provide "something of the elementary, the primary, the fundamental and stable." Without some commonly accepted narratives that articulate the truths and falsehoods, the values and disvalues of a culture, we would find life intolerable disorienting. In this sense, television's entertainment programs may speak to a human need for identity, both individual and social.

Id.

7. NATURAL BORN KILLERS (Warner Bros. 1994).

8. See *Beasley v. State*, 269 Ga. 620, 627 (1998).

9. THE GODFATHER (Paramount Pictures 1972).

10. See, e.g., *Commonwealth v. Graziano*, 331 N.E.2d 808, 813 (Mass. 1975); Jeremiah Donovan, *Some Off-the-Cuff Remarks About Lawyers as Storytellers*, 18 VT. L. REV. 751, 753 (1994) (referring to the prosecution's invocation of images from the *Godfather* in *United States v. Bianco*, No. H-90-18 (D. Conn. July 16, 1991)).

11. See Donovan, *supra* note 10, at 759.

12. See SHERWIN, *supra* note 3, at 30-31.

13. See Philip N. Meyer, "Desperate for Love": Cinematic Influences Upon a Defendant's Closing Argument to a Jury, 18 VT. L. REV. 721, 748-49 (1994).

14. See AL RIES & JACK TROUT, POSITIONING: THE BATTLE FOR YOUR MIND (1981); Vicki L. Smith, *Prototypes in the Courtroom: Lay Representations of Legal Concepts*, 61 J. PERSONALITY & SOC. PSYCHOL. 857 (1991).

greater or lesser degrees of self-awareness, they do.¹⁵ Teaching cultural legal studies (for example, in courses on law and popular culture) can help to train lawyers to be better storytellers. It can also help litigators not only to discern the narrative strategies that are marshaled against them but also to defuse and counter those narratives with effective stories of their own.¹⁶

That is the pragmatic payoff of learning more about popular images of the law. Society's shift to visual literacy is opening up a new professional tool kit for effective lawyering. It behooves contemporary legal practitioners to study these new tools with care in order to hone their craft. In the years ahead it will become increasingly difficult not to practice law on the screen, whether in court or out.¹⁷

From a more academic ("cultural studies") point of view, popular legal representations also have a lot to tell us. The kinds of images that find their way into law films—the stories that are told, the character types that are portrayed—help to inform us about the society we live in. For example, popular legal representations serve as a cultural barometer revealing pressing needs, fantasies, and anxieties, as well as beliefs, hopes, and aspirations that are circulating in society. These narrative elements shape and inform the way we understand current legal issues, notorious trial outcomes, and the role of law in society in general.¹⁸

In my recent book, *When Law Goes Pop*,¹⁹ I discuss in greater detail both the pragmatic (rhetorical) aspect of visual legal representations and the contribution they can make to cultural analysis and critique. In this Essay, I want to concentrate on a less familiar aspect of cultural legal studies. I want to consider the law film as a form of jurisprudence.²⁰ Film, at its

15. See, e.g., NEAL FEIGENSON, *LEGAL BLAME: HOW JURORS THINK AND TALK ABOUT ACCIDENTS* (2000); Anthony G. Amsterdam & Randy Hertz, *An Analysis of Closing Arguments to a Jury*, 37 N.Y.L. SCH. L. REV. 55 (1992).

16. See generally Marc Galanter, *An Oil Strike in Hell: Contemporary Legends About the Civil Justice System*, 40 ARIZ. L. REV. 717, 725 (1998) ("[F]olklore expresses deep and abiding sentiments and perspectives, and examining it can illuminate our dispositions that are otherwise difficult to fathom. . . . My point is how deeply this kind of discourse has penetrated current debate about legal policy.").

17. This includes litigating cases in the mass media. See SHERWIN, *supra* note 3, at 141–52 (discussing the litigation–public relations phenomenon).

18. See *id.* at 73–78; see also PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998); Barbara Ynguesson, *Popular Legal Culture: Inventing Law in Local Settings*, 98 YALE L.J. 1689 (1989).

19. SHERWIN, *supra* note 3.

20. To date the jurisprudence of film has been pursued by only a handful of legal scholars. See, e.g., SHERWIN, *supra* note 3, at 171–203 (examining both the original and the remake of *Cape Fear* (CAPE FEAR (Melville-Talbot Productions 1962); CAPE FEAR (Amblin Entertainment et al. 1991)), *Twin Peaks: Fire Walk with Me* (New Line Cinema 1992), and other films for insights into popular cultural beliefs about law, lawyers, and the possibility (or impossibility) of approximating truth and justice in the legal system); John Denvir, *Capra's Constitution*, in *LEGAL*

best, like all forms of art, provides a way of understanding significant shifts in ways of knowing and of being in the world. In addition to fresh epistemological and ontological insights, film also serves as an important source of normative vision. It can help us to understand the way things are (or how we perceive them to be), how life is lived now, so to speak, and how we might learn to live better, more wisely.

This claim should begin to shed light on the title I have chosen for this Essay: *Nomos and Cinema*. It alludes to perhaps the most well-known work by the late Robert Cover of Yale Law School, *Nomos and Narrative*.²¹ It is hard to believe that we have nearly reached the twentieth anniversary of that groundbreaking essay. Its brilliance and far-sightedness have not lessened over the years. I have written about Cover before, taking a somewhat critical stance toward his later “messianic” writings.²² I offer the present work in homage to Cover’s crucial insight concerning the interpenetration of law and culture.

What does it mean today to say that law and culture interpenetrate? Consider Robert Cover’s opening paragraph in *Nomos and Narrative*:

We inhabit a *nomos*—a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful. . . . No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.²³

REELISM: MOVIES AS LEGAL TEXTS, at 118–32 (John Denvir ed., 1996) (arguing that the study of Hollywood movies can change our understanding of constitutional theory); *Exploring the Hidden Domains of Civil Justice*, 50 DEPAUL L. REV. 425 (2000) (using film to explore the social, psychological, cultural, and professional dimensions involved in the emergence and transformation of disputes); Norman Rosenberg, *Young Mr. Lincoln: The Lawyer as Superhero*, 15 LEGAL STUD. F. 215, 227 (1991) (comparing film scenes to legal realist insights of the 1930s); Alison Young, *Murder in the Eyes of the Law*, 17 STUD. L. POL. & SOC’Y 31 (1997) (bringing together feminism, psychoanalysis, critical criminology, and film theory in an effort to explore “how cinema is jurisprudence”).

21. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983). In traditional usage, *nomos* refers to conventional law and morality (“the norm of civilization”) as opposed to *physis* or the uncontrived order of nature. See CHARLES SEGAL, *TRAGEDY AND CIVILIZATION: AN INTERPRETATION OF SOPHOCLES 4–5* (1981); G.B. KERFERD, *THE SOPHISTIC MOVEMENT* 54 (1981). In this Essay I adhere to Robert Cover’s somewhat idiosyncratic sense of *nomos* as a discrete normative world constituted by a repository of inherited texts and a repertoire of specific meaning making practices..

22. Richard K. Sherwin, *Law, Violence and Illiberal Belief*, 78 GEO. L.J. 1785, 1795 (1990).

23. Cover, *supra* note 21, at 4–5.

Cover's cultural approach helps us to think more deeply about the connections between law and justice, self-identity and legal consciousness, and also about the integration of legal theory and legal practice. Thinking more carefully about how legal meanings are made, unmade, or altered, and how people's lives are affected in the process, is to a significant extent an ethnographic task. But it also spans many disciplines.²⁴ Thinking through the legal culture also partakes in what has come to be known, for better or worse, as the postmodern project of thinking without foundations. I want to associate this postmodern perspective with the emerging cultural legal studies movement.

Cultural legal studies embraces important insights from the critical legal studies, critical race studies, and law and literature movements. It too is broadly multidisciplinary, drawing insights from cultural anthropology, cognitive psychology, linguistics, rhetoric, and media studies in order to critically examine how legal meanings are constructed, and how they are put to work from the courtroom to the law office to the culture at large.²⁵ For over a quarter of a century now, critical legal studies (CLS) scholars have made important intellectual advances based in large part on the strength of deconstructionist theory. Critical scholars have uncovered irrationality and hidden ideology in appellate case law, and have excavated strategies of power and knowledge in legal institutions as well as in the patterns of legal discourse generally.²⁶ The CLS movement lost steam, however, when it became clear that a steady diet of skeptical delight was insufficiently nourishing. It is time for a new wave, a new passion.²⁷

24. See GEORGE E. MARCUS & MICHAEL M.J. FISCHER, *ANTHROPOLOGY AS CULTURAL CRITIQUE* (2d ed. 1999).

25. This syncretic approach informs such recent works as ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* (2000), GUYORA BINDER & ROBERT WEISBERG, *LITERARY CRITICISMS OF LAW* (2000), FEIGENSON, *supra* note 15, and my own book, SHERWIN, *supra* note 3. See also ROSEMARY J. COOMBE, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES* (1998); *LAW AND THE ORDER OF CULTURE* (Robert Post ed., 1991); SALLY ENGLE MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING CLASS AMERICANS* (1990); AUSTIN SARAT & WILLIAM L.F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS* (1995); AUSTIN SARAT & THOMAS R. KEARNS, *LAW IN THE DOMAINS OF CULTURE* (1998); ALISON YOUNG, *IMAGINING CRIME* (1996); Susan S. Silbey, *Making a Place for Cultural Analyses of Law*, 17 *LAW & SOC. INQUIRY* 39 (1992).

26. See Richard K. Sherwin, *Lawyering Theory: An Overview, What We Talk About When We Talk About Law*, 37 *N.Y.L. SCH. L. REV.* 9, 31–33 (1992).

27. See FRIEDRICH NIETZSCHE, *THE WILL TO POWER* 523 (Walter Kaufmann ed., Walter Kaufmann & R.J. Hollingdale trans., 1968) (“Value words are banners raised where a new bliss has been found—a new feeling.”); see also Peter Goodrich, *Gay Science and Law*, in *RHETORIC & LAW IN EARLY MODERN EUROPE* 105, 121 (Victoria Kahn & Lorna Hutson eds., 2001) (urging a renewal of the gay science, which Peter Goodrich describes as “the art and practice of the passion for knowledge” and “a rhetoric of the senses, a practice and ethic of passion”); Nicola Lacey, *Normative Reconstruction in Socio-Legal Theory*, 5 *SOC. & LEGAL STUD.* 131–57 (1996) (noting that

Perhaps the key advance that cultural legal studies offers is to make theory touch down. Multidisciplinary microanalyses of concrete legal practices counterbalance, without eradicating the need for, critical theory. Such analysis also offers a way to complement CLS's prevailing ethos of suspicion with strategies of affirmation. The constitutive process of legal meaning-making and the power of legal meanings to enchant the mind may now be studied as a culture-wide phenomenon. In this constructivist view, the responsibility for meaning remains ours—on both a collective (cultural) and individual (cognitive) level.

The phenomenology of legal meaning-making confronts us with the shifting fortunes of enchantment and disbelief in society. The critical task before us is to reflectively assess the specific conditions under which belief or suspicion may be more preferable.²⁸

To live in a *nomos* we need to know how to live. We need guidance, education, and commitment. We need shared meaning-making practices and a corpus of inherited texts. Out of these materials and practices we build institutions, paradigms for behavior, and patterns of discourse. We agree upon a shared repertoire of moves, "a lexicon of normative action,"²⁹ that we combine anew to meet the needs of our time.

Normative commitment is never simply a given. Normative yearnings must be met anew in every generation. The meanings that hold a world together must be actively experienced, performed, and thereby reenacted at least on occasion, so that the wellsprings of commitment may be refreshed. This elementary need points to the ongoing social function of ritual and drama in the service of enchantment.³⁰

I use the word enchantment deliberately to evoke the *eros* of *logos*.³¹ Enchantment is an admittedly provocative way of thinking and talking about rhetoric, persuasion, and belief. Through enchantment desire mixes

once the fantasy of a transcendent objective foundation for ethical beliefs is relinquished, it is possible to "re-enchant" the world).

28. See Richard K. Sherwin, *A Matter of Voice and Plot: Belief and Suspicion in Legal Storytelling*, 87 MICH. L. REV. 543 (1988).

29. Cover, *supra* note 21, at 9; see also WERNER JAEGER, *PAIDEIA, THE IDEALS OF GREEK CULTURE*, at xiv, xxvi (1939) ("[T]he basis of education is a general consciousness of the values which govern human life. . . . The Greek trinity of poet, statesman, and sage embodied the state's highest ideal of leadership.").

30. See VICTOR TURNER, *DRAMA, FIELDS, AND METAPHORS* 45, 49 (1979) (describing *communitas* as a bond uniting people over and above any social bonds or structure and which is particularly apparent at liminal moments of conflict and attempts at resolution).

31. See IOAN P. COULIANO, *EROS AND MAGIC IN THE RENAISSANCE* (1987); GORGIAS, *ECOMIUM OF HELEN* (D.M. MacDowell ed., 1982) (5th century, B.C.); JOHN RAJCHMAN, *TRUTH AND EROS: FOUCAULT, LACAN, AND THE QUESTION OF ETHICS* (1991).

with healing and persuasion.³² Enchantment evokes the power to compel and be compelled.³³ It is a strange compulsion, not entirely apprehended or apprehensible by the rational mind. Hence, the historic fear of bewitchment and magic that has dogged rhetoricians, playwrights, poets, and artists from Socrates's generation to our own.³⁴ Yet, once encountered, how can we not be awed by the power of seduction, of becoming enamored, of falling under the spell of love or beauty? To enchant is to blend power and delight. It is the Sirens' song, "crying beauty to bewitch [Odysseus and his men]."³⁵ Perhaps it is the same inhuman cry that sings "beyond the genius of the sea,"³⁶ echoing the "rage for order" that Wallace Stevens records at Key West.³⁷ Perhaps it is the same call that Martin Heidegger invokes when he writes of "the echoing response to the first call of Being . . ."³⁸ With these words Heidegger links singing and thinking, the poet's way to truth, art's domain. As Heidegger puts it: "*Beauty is one way in which truth occurs . . .*"³⁹ "Setting up a world and setting forth the earth, the work [of art] accomplishes this striving."⁴⁰

Without enchantment and belief the force of law ultimately decays into naked power alone. Then the thrill of control, and the various gratifications (material and otherwise) that control brings, unites those who rule.⁴¹ And among the ruled, in place of active commitment, fear becomes

32. See PEDRO LAIN ENTRALGO, *THE THERAPY OF THE WORD IN CLASSICAL ANTIQUITY* (1970).

33. See JACQUELINE DE ROMILLY, *MAGIC AND RHETORIC IN ANCIENT GREECE* 77 (1975) ("[S]ublime speech 'does not produce persuasion in the audience, but enchantment and ecstasy . . .'" (quoting LONGINUS, *DIONYSIUS LONGINUS ON THE SUBLIME* (William Smith trans., London 1739) (200 A.D.))); see also COULIANO, *supra* note 31, at 107 (noting that Giordano Bruno concerned himself with the possibility of "erotic manipulation of the individual and the masses").

34. See, e.g., DAVID FREEDBERG, *THE POWER OF IMAGES* 378–428 (1989) (discussing the history of idolatry and iconoclasm); see also PETER GOODRICH, *OEDIPUS LEX: PSYCHOANALYSIS, HISTORY, LAW* 41–107 (1995) (tracing the history of antirhetoric, or rhetoric as a form of antirhetoric, and of imagery that exists to efface itself in order to repress idolatry, sensuality, and dishonor of a deity).

35. HOMER, *THE ODYSSEY* 210 (Robert Fitzgerald trans., Everyman's Library 1992) (800 B.C.).

36. Wallace Stevens, *The Idea of Order at Key West*, in *THE PALM AT THE END OF THE MIND* 97 (1984).

37. *Id.* at 98.

38. MARTIN HEIDEGGER, *POETRY, LANGUAGE, THOUGHT* 9 (Albert Hofstadter trans., 1971).

39. *Id.* at 56.

40. *Id.* at 49.

41. See ERICH AUERBACH, *MIMESIS: THE REPRESENTATION OF REALITY IN WESTERN LITERATURE* 55 (1946) ("Grotesque and sadistic, spectral and superstitious, lusting for power yet constantly trying to conceal the chattering of their teeth—so do we see the men

the only cohesive society knows: fear of chaos and fear of pain in the face of law's might.⁴² To escape this crude fate the normative vision that impels law to span from the present toward a possible future is also needed. In this sense, normative vision is law's life-blood. Without it, the bridge falls. Law ossifies into imperial enforcement.⁴³

Law is more than a system of rules and the fear of predictable consequences. It is a world made up of meanings that are drawn from shared texts and practices. It is a normative world, which means that embodied within it is a moral point of view, a normative vision. In this sense, we may say, along with Cover, that law plots a trajectory from the present to the future. It is a bridge that crosses over from the present moment to possible futures. Quoting Cover: "A *nomos* is a present world constituted by a system of tension between reality and vision."⁴⁴ Film is part of the universe of meaning-making in which we all live. Film supplies at least some of the narratives and the storytelling styles that situate our being in a normative world. It offers normative visions that may point us toward some possible future.

To illustrate my claims regarding *nomos* and cinema, I will focus in this essay on *Red*,⁴⁵ the final masterpiece of the late Polish filmmaker, Krzysztof Kieslowski. It is the last in a trilogy of films called *Blue*,⁴⁶ *White*,⁴⁷ and *Red*.⁴⁸

of Ammianus' ruling class and their world."); SHADI BARTSCH, *ACTORS IN THE AUDIENCE* (1994):

The atrocities of a Roman emperor corrupted by his power often found both audience and victim in the theatrical and gladiatorial games of the city . . . [W]hen an emperor's audience fails to decode the spectacle before their eyes into reality and then to recode their own response back into the feigned and theatrical, the outcome is death.

Id. at 1, 20.

42. See THOMAS HOBBS, *LEVIATHAN* 17 (Herbert W. Schneider ed., Macmillan Publishing Co. 1958) (1651) ("It is men and arms, not words and promises, that make the force and power of the laws.")

43. See Cover, *supra* note 21, at 16 ("The sober imperial mode of world maintenance holds the mirror of critical objectivity to meaning, imposes the discipline of institutional justice upon norms, and places the constraint of peace on the void at which strong bonds cease.")

44. *Id.* at 9.

45. *RED* (MK2 Productions SA et al. 1994).

46. *BLUE* (MK2 Productions SA et al. 1993).

47. *WHITE* (MK2 Productions SA et al. 1993).

48. All three films were written by Krzysztof Kieslowski and a Polish lawyer named Krzysztof Piesiewicz, whom Kieslowski happened to meet while making a documentary on trials under martial law. In titling these films after the colors of the French flag, Kieslowski signaled his intent to create a series of symbolic, intertwining tales about the mythic foundational values that they symbolize, namely: liberty, equality, and fraternity. Let it be said at once, however, that these are by no means abstract studies. To the contrary, as Kieslowski himself put it, "Blue, white, red: liberty, equality, fraternity . . . The West has implemented these three concepts on a political or social plane, but it's an entirely different matter on the personal plane. And that's why

Each is a meditation on the symbolic values of the tricolored French flag: liberty (blue), equality (white), fraternity (red). I believe Kieslowski's final film is imbued with a profoundly ethical vision of contemporary life in community with others under law. It is a vision that also reflects what we have come to recognize as postmodern conditions. Whatever else the word "postmodern" may mean, and there are surely more meanings than we can bear (a sure sign of postmodernity), I offer the following signs of the times:

(1) We have come to realize that we live in webs of meaning that are of our own making; law, as Clifford Geertz has said, is a particular way of imagining the real.⁴⁹

(2) This constructivist insight in combination with new technologies of simulation and mass communication have led to problems. For example, distinguishing between truth and fiction, reality and fantasy, reason and desire has grown increasingly difficult in our time.⁵⁰

(3) This confusion is aided and abetted by a massive proliferation of images; we are so saturated with images that it is difficult enough just to keep up, much less assess what they mean.⁵¹

(4) The commercial production of images places a premium on audience share, which in turn leads to a heightening of the sensational power of images to draw and maintain their hold upon the viewer's attention.⁵²

we thought of these films." KIESLOWSKI ON KIESLOWSKI 212 (Danusia Stok ed., 1995); see also GEOFF ANDREW, *THE THREE COLOURS TRILOGY* 69 (1998):

[In these films] the metaphysical is incarnated by the physical. Rather than use fuzzily romantic 'holy' images to portray epiphanies or transcendental experiences . . . the *Three Colours* films suggest the presence of the extraordinary or inexplicable by showing something that is ordinary or familiar in itself, in a *context* which is extraordinary or inexplicable.

Id. One may also describe this as a vision of immanence; each moment teems with redemptive and tragic possibility. See WALTER BENJAMIN, *Theses on the Philosophy of History XIV*, in *ILLUMINATIONS* 261 (Hannah Arendt ed., Harry Zohn trans., 1968) ("History is the subject of a structure whose site is not homogeneous, empty time, but time filled by the presence of the now. Thus, to Robespierre ancient Rome was a past charged with the time of the now which he blasted out of the continuum of history."); EMMANUEL LEVINAS, *TIME AND THE OTHER* 132 (Richard A. Cohen trans., 1987) ("[W]ith Bergsonism one can think the human as the explosion of being in duration. The human would be the original place of rupture . . . the very advent of mind . . . the emergence of the new as duration.").

49. See CLIFFORD GEERTZ, *LOCAL KNOWLEDGE* 184 (1983).

50. See SHERWIN, *supra* note 3, at 15–39.

51. See JEAN BAUDRILLARD, *FATAL STRATEGIES* (1990); JAMES B. TWITCHELL, *CARNIVAL CULTURE* 51 (1992) ("What characterizes the condition of culture since World War II is . . . that now we have more signs that point nowhere.").

52. See SHERWIN, *supra* note 3, at 37.

(5) Sensation, saturation, and speed tend to reduce depth as the viewer rushes along the surface of the screen in an effort to keep up with the flow.⁵³

(6) Fragmentation, the rush of desire, and the contingent meaning of juxtaposed images tend to destabilize categorization, undercut deliberation, and displace linear causation for the sake of free association among ideas and affects.⁵⁴

In *When Law Goes Pop*, I examine the impact of postmodern conditions on law. In particular, I criticize the predominantly skeptical or disenchanting attitude that characterizes a good deal of recent critical scholarship. I contend that excessive skepticism does law no good.⁵⁵ Fortunately, skepticism does not have a lock on postmodern culture. There is another, more affirmative kind of postmodernism.⁵⁶ Affirmative postmodernism is postmodern in its understanding of how we construct meaning in everyday life and how self and social reality are built up from the different stories that we tell ourselves and that we share with others in the course of our social and professional practices.⁵⁷ It is also postmodern in its recognition of the cognitive habits that help to construct and maintain the diverse microidentities that comprise the self from one context to another. And it is postmodern in its acceptance of contingency and of the disruptive, uncontrollable surge of the irrational both within and without.

Even so, postmodernism need not be skeptical. For example, a postmodern story might convey meaning by making novel connections or juxtapositions in the mind. Thus a narrative may be postmodern in its nonlinear use of popular cultural images and symbols, but need not employ these images and symbols in an insular or exclusively self-referential manner. A story might concede the demise of the autonomous modern subject, but still find meaning through the distributed self: an identity comprised of multiple cultural and social constructs shared by others in particular communities. In this postmodern but nonskeptical spirit, one might recognize the irreducibility of truth and justice to any abstract metanarrative (for example, a system based on axiomatic principles such as fairness, liberty, or some felicific calculus) but still experience the vitality of a discrete truth or a localized, embodied sense of justice.

53. See PAUL VIRILIO, *THE AESTHETICS OF DISAPPEARANCE* 35 (1991) (“[T]urned causal by its excessive speed, the sensation overtakes the logical order.”).

54. See SHERWIN, *supra* note 3, at 19–25 (discussing visual literacy and the ascendancy of associative reasoning).

55. See *id.* at 186–203.

56. See *id.*; see also PAULINE MARIE ROSENAU, *POST-MODERNISM AND THE SOCIAL SCIENCES: INSIGHTS, INROADS, AND INTRUSIONS* 57–60 (1992).

57. See BRUNER, *supra* note 5, at 116, 132–38.

Abstraction may give way to particularity, contextuality, multiplicity; judgment may turn toward characteristic voices and localized accounts. But localization and contextualization are not fatal to meaning. It remains possible to seek rather than abandon meaning for concepts like truth and justice—even in the face of contingency, unpredictability, and spontaneity. In this way, human depth remains. Internal forces (like motivation and intention) rather than wholly external forces (like chance or fate) still account for events and provide a basis for meaning and accountability.

Of course, to say as much is not to deny the presence of strange irrational forces within and without—forces that can never be fully mastered. Still, the ability to embrace meaning, to say “yes” to ethical enchantment, remains intact. Indeed, rather than deny the contingency and ultimate fragility of meaning, these now become the very conditions that inform our shared responsibility for meaning’s construction, maintenance, and change.

The affirmative postmodern viewpoint takes us beyond demystifying critique and the skeptic’s stance of perpetual irony by embracing the possibility of enchantment and wisdom. I would even go so far as to say that the affirmative postmodern actor seeks the re-enchantment of ethics and wisdom.⁵⁸

This approach comports with what Richard Rorty and Clifford Geertz, among other postmodern thinkers, refer to as philosophizing without foundations. The goal is not to displace one system, or axiomatic principle, with another. Its wisdom is local, contextual, relational, and contingent. Immanent meanings may be cultivated or seized, a gift of the moment, but they are not guaranteed.⁵⁹

I believe that the sort of ethical postmodern attitude that I have been describing informs the normative vision that we find in Kieslowski’s *Red*. There is nothing romantic about his view. In many ways it is tragic.⁶⁰ But it eschews a temptation that has captivated many critics of postmodern disenchantment. Kieslowski avoids nostalgia. He resists the temptation to

58. See FRANCISCO J. VARELA, *ETHICAL KNOW-HOW: ACTION, WISDOM, AND COGNITION* 75 (1999) (“My presentation is, more than anything, a plea for a re-enchantment of wisdom, understood as non-intentional action. This skillful approach to living . . . opens up openness as authentic caring.”).

59. See JEAN-PAUL SARTRE, *NAUSEA* 131 (Lloyd Alexander trans., New Directions Pub. Corp. 1964) (“The essential thing is contingency, I mean that one cannot define existence as necessity. To exist is simply *to be there*. . .”).

60. See SEGAL, *supra* note 21, at 408 (“The tragic poet becomes a kind of culture hero who confronts the darker mysteries of life and by his art, like Oedipus by his god-given power, transmutes the pollutions of an accursed past into blessings for his fellow citizens.”).

envision some unspoiled past, some distant age of Enlightenment whose traditions and values simply await our embrace.⁶¹

Kieslowski understands the limits of postmodern skepticism, but he does not turn his back on the world we know. His challenge, and ours, is to work through, by working with, current cultural conditions. We cannot simply turn away.

The world Kieslowski depicts is familiar to us. Yes, this Polish director's world, filmed in Geneva, in French, is our world too. It is part of the multifaceted global culture that is forming around us—in all its fragmented, contingent, and unreasoned glory. It is also a world of law, lawyers, and judges. I believe that the ethical vision that it presents helps us to think in new ways about law and justice in postmodern times.

In *Red*, Kieslowski tells the stories of three main characters: a retired, disenchanted judge named Joseph Kern; a young lawyer named Auguste Bruner, who is about to become a judge himself; and a young woman named Valentine Dussaut, a student and part-time model, who fortuitously enters and changes Kern's life, and perhaps Bruner's as well.

Who knows, perhaps the older Kern and the younger Bruner are the same man subject to a different fate. Kieslowski leads us to wonder whether we all lead lives that are contingent upon chance encounters. Each of us might be different, might become another, unimaginable to us now at this moment, but for some unforeseen event in our lives, an event over which we have no control whatsoever.

"Man's character is his fate," said the ancient Greek philosopher Herakleitos.⁶² A paradoxical saying. Fate shapes character, but character is also what we make of our fate. In *Red* we learn that both interpretations may be true. But we also come to see that passive indifference, disenchanted fatalism, is a form of death in life, while the immanent call of the redemptive moment, that moment of hope and deliberate change, calls us to life.

Red is at least in part a film about the ramifications of disenchantment and belief. It addresses the perennial question: What basis do we have for affirmation and for wise judgment? Culture is an invaluable guide in this matter. It helps us when we find ourselves wondering, what is there beyond custom and habit to hold our normative universe together? According to Cover, the creation and maintenance of a normative world rests upon three pillars: a corpus of texts, educational discourse, and exemplary practices.⁶³

61. See Sherwin, *supra* note 28, at 555–57.

62. JOHN BURNET, *EARLY GREEK PHILOSOPHY* 141 (4th ed. 1969) (quoting Herakleitos).

63. See Cover, *supra* note 21, at 12–13.

We need a source of meaning, a method of learning, and personal acts of commitment.

In what follows, I apply these constitutive criteria to Kieslowski's *Red*. I want to show how a particular cultural text, in this instance a film, can provide insight into the ongoing process of world building. Kieslowski conveys a normative vision in Cover's sense precisely by (1) identifying sources of meaning and affirmation in contemporary life, (2) presenting ways of learning from those sources, and (3) evoking the power of enchantment through which exemplary acts express and inspire commitment.

Notably, the normative vision presented here is neither instrumental nor deontological. Kieslowski does not speak in terms of individual entitlements, nor does he calculate pleasure and pain. He identifies no system of principles from which we may assess how to relate to or judge others. In Kieslowski's normative universe people learn from chance events, from the immediacy of experience in relation to others, and from critical self-reflection upon that experience. Meaning is an immanent possibility. It hinges on attentiveness to what the lived moment offers. Attentiveness, however, may be blocked by habits of thought, memory, and emotion—habits that are manifest in self-fulfilling patterns of behavior that tend to reinforce the sameness of lived experience. In this sense we may say that character is fate, the sum of our life history. But our fate is not sealed. The possibility of redemptive change, through chance, openness, trauma, and critical reflection, remains.⁶⁴

From the outset of Kieslowski's film we are introduced to a network of connected, soon-to-be connected and soon-to-be disconnected lives.

Michel, whom we will never see, always speaks from a distance. We hear his disembodied voice in telephone calls from some foreign land. He never speaks face-to-face with his girlfriend, Valentine Dussaut. And when he does speak, jealousy, insecurity, and perverse desire fill the air. These are the hallmarks of his troubled relationship with Valentine. His opening words in the first conversation with Valentine are typical of their every exchange, "First it was busy, then the machine. Are you alone? . . . Is someone there?" Ungrounded suspicion and jealousy are Michel's calling cards. And when at one point he asks Valentine to get into bed, an apparently familiar overture to some kind of phone-sex ritual that has plagued Valentine before, we hear her sadly whisper, "Ah, it commences." No doubt about it, the connection between Michel and Valentine is troubled.

64. See Sigmund Freud, *Inhibitions, Symptoms, & Anxiety*, in THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 75, 159–60 (James Strachey ed. & trans., 1959) (discussing working through neurotic repetition); see also VARELA, *supra* note 58, at 30–31.

Meanwhile, just across the street, unbeknownst to Valentine, the young lawyer Auguste Bruner is also on the phone with his girlfriend, Karin. Karin is a "personal weather reporter."⁶⁵ She plies her trade by telephone. In contrast to Michel's perpetual suspicions about Valentine's faithfulness, Auguste exhibits an open, trusting nature toward Karin. Just by the whisper of a kiss into the receiver, he has no doubt that she will know it is him. Who else could it be? Auguste may not realize it now, but Karin will soon betray him by sleeping with another man.

It is the same betrayal that occurred long ago in the life of another, now far older man, the retired judge Joseph Kern. Kern has been disappointed in life and in love. He spends his time in retirement eavesdropping on his neighbors' telephone conversations. The travails and suffering that he overhears only confirm his philosophy of disenchantment and cynical indifference.

But chance changes everything. Or, at least, such is its power and potential. And it is by chance that Valentine comes into Kern's life. The agent is Kern's stray dog whom Valentine inadvertently strikes with her car.⁶⁶ The address inscribed on the injured dog's collar leads her to Kern's home. Kern has placed himself outside the social loop. Alone, unconnected to others, he no longer acts. He simply listens, furtively, to the private sufferings of his neighbors, as their no-longer-private telephone conversations amply reveal. The lies, the betrayals, the cruelty—here is human nature laid bare. That, at any rate, is how Kern explains his life as Valentine silently listens. To judge, he tells her, is pointless. Nothing changes. Besides, who knows when forgiveness is better than condemnation?

Kern then tells an anecdote to explain. Once, thirty-five years ago, when still a judge, Kern mistakenly acquitted a man. The man, he later learned, was guilty. But upon making his own investigation into the matter many years later, Kern also learned that the man subsequently married, had three children and a grandchild, and was, as Kern puts it, "living in peace."

"Deciding what is true and what isn't now seems to me a lack of modesty," Kern concludes. So he contents himself simply with listening. It is

65. Ironically, her inability to predict a storm on the English Channel will lead to her own and her new lover's death at sea. By chance, Karin also happens to be one of Joseph Kern's neighbors. His eavesdropping upon her conversations with Auguste Bruner leads Kern to conclude that Karin's and Auguste's relationship will not last. "She is not the one he is looking for," Kern will tell Valentine Dussant.

66. Arguably, the accident is not entirely fortuitous. Valentine momentarily loses her concentration when a strange sound of electronic interference comes on the car radio. It is the same sound that we hear when Valentine first enters the room that contains Kern's eavesdropping equipment. Could it be that Kern has somehow reached out to Valentine, that he is signaling his need, that his interference with her life course is a call beckoning her into his orbit?

like when he was a judge except that now he knows the stories he hears are true. And the futile responsibility of judging has been lifted from his shoulders.

Kern then recounts a story from his life. Over thirty-five years before a man seduced and ran off with Kern's one and, as it turned out, only love. Years later, the same man came before Kern in court. The roof of a market that Kern's rival had been building collapsed. People were killed. Kern condemned him. "It was a legal sentence," he tells Valentine. But Kern's tone betrays his doubts. Indeed, it proved to be Kern's last judgment from the bench. After issuing it he asked for early retirement.

But the tale does not end there. Valentine does not share Kern's dismal view of life. Her fresh spirit wafts over his deadened one. Valentine succeeds in reanimating something that had for many years lain dormant within Kern. Old memories of lost love are stirred, perhaps along with the inextinguishable power of love itself. He stopped believing, Kern tells Valentine, but then he adds, "Maybe you're the woman I never met." If only their paths had crossed when he was still young, perhaps she could have changed his life. But perhaps she still can.

Consider this exchange between them. Kern has been leading Valentine through the personal travails of his neighbors as their exposed telephone conversations play out, one after the other, on the air inside Kern's cramped living room. "Ah, next program, not very interesting," Kern will say. A mother who incessantly calls her daughter, bombarding her with false complaints about ill health and lack of food, lies that now fall on deaf ears. They barely conceal her desperate need for her daughter to come, to ease the terrible suffering of loneliness. "Next program," Kern dispassionately intones, as if this conversation and the others that we have heard were no more than a TV soap opera. As Andy Warhol has said, "once you see emotions from a certain angle you can never think of them as real again."⁶⁷ This is what it is like when the real collapses into the insular domain of free-floating images. Compassion loses its meaning. It is what has become of Kern in the face of life's tragic disappointments. The suffering around (and within) him has destroyed his capacity to feel or care about anyone.

But Valentine's response is different. She is repulsed both by Kern's actions and by his cynical philosophy, and she tells him so. When Kern says he cares for nothing, Valentine replies, "So stop breathing!"

67. ANDY WARHOL, *THE PHILOSOPHY OF ANDY WARHOL* 27 (1975); see also MARK POSTER, *THE MODE OF INFORMATION* 63 (1990) (describing how TV ads operate as "floating signifiers" that convey "desirable or undesirable states of being . . . in a way that optimizes the viewer's attention without arousing critical awareness").

"Good idea," is Kern's nihilistic response. But Kern's long infatuation with loss and death are about to end. In Valentine the breath of life is strong. She radiates innocence, vulnerability, and compassion.

"You are mistaken," she tells Kern. "People aren't bad. It's not true . . . People may be weak sometimes." She then rushes in tears from his house, but not before having bestowed a great gift. Her vibrant spirit opens up a redemptive moment for Kern, and he realizes its potential.

After she departs he sits down at his desk to compose letters to each of his neighbors in turn. In them Kern confesses his immoral and illegal acts of spying. Kern's remembrance of lost love precedes the change. It is against this backdrop that he understands, perhaps for the first time, the real nature of his suffering and of the rage that he has been acting out in his abusive and perverse relations with others. Kern's cynicism is but a defensive shell, protecting him from the pain of unexpressed love.

Inhaling Valentine's breath of life revives Kern's hardened heart. He will now repudiate fatalistic passivity and the paralysis of judgment that it brings. In his first act of judgment Kern judges himself. Guilty. Passive voyeurism, the reflection of his deadened spirit, must end. If character is fate, now Kern will alter his fate by repudiating the perverse character that he has become. Kern's chance connection with Valentine has stirred memories of youthful love. But Valentine has done more. She has inspired within him love of another sort: the selfless love of *agape*, a form of love that aspires to spiritual or fraternal, rather than physical, consummation.

Kern's connection to others in the world will now be restored. Rather than passively (and perversely) enjoy the spectacle of human suffering, Kern will actively seek to untangle crossed connections and foster authentic ones. Years of listening to people's stories of suffering and conflict, both on and off the bench, have given him peculiar insight into the mysterious ways of chance and into the vicissitudes of human interactions. Like Oedipus at Colonus whose long years of exile culminate in divine sanctification, or Prospero's fateful enchantments in Shakespeare's *The Tempest*,⁶⁸ so too Kern's years of lonely suffering seem to have bestowed upon him not only tragic wisdom, but something more. Something akin to oracular vision, the foresight of a fate god, or perhaps an oracle of law.⁶⁹

68. WILLIAM SHAKESPEARE, *THE TEMPEST*.

69. Throughout the film Kieslowski hints at Kern's unusual abilities, such as his prediction of a sudden change of light, his seeming ability to influence the spin of a coin, and his prediction that Auguste's and Karin's relationship is about to end. Indeed, Kern not only arranges for Valentine and Auguste to meet, but he also seems to foresee Valentine's future. "Last night I dreamed of you," he tells Valentine. "You were forty or fifty years old and you were happy."

"Will this happen?" Valentine will later ask Kern.

"Yes," he confidently replies.

Kern will now set in motion ripples of fate that will change Valentine's life, and perhaps young Auguste Bruner's life as well. For it is through Kern's designs that their paths will finally cross. In this way the "mistake in time" that long deprived Kern of the chance for a fulfilling relationship will be rectified.⁷⁰ The elderly Kern may not be able to court the young Valentine himself, but he can reciprocate in a fashion the selfless love and compassion that emanate from her. Kern will now use his knowledge and revived sense of care for others to save the young Auguste Bruner from suffering Kern's fate. No, Bruner need not replicate Kern's disappointment and ensuing cynicism. And it is toward this end, inspired by and expressing Valentine's compassion and selfless kindness, that Kern brings the two together. Seeing their contentment will suffice.

Strange forces have been unleashed. The cherries on the slot machine outside the café near Valentine's apartment building have all lined up, which means—according to the law of the conservation of chance—that a correction is at hand. And so it is. That very day a photo of Valentine's younger brother will appear in the newspaper above a caption announcing an increase in the number of young Swiss heroin users. Another development is also afoot. Karin is about to betray Auguste. And soon thereafter Valentine will come to question her connection with Michel. It is against this backdrop of trauma and flux that Kern sets in motion a chain of events that leads Valentine's and Auguste's paths to cross.

Five separate lives, three relationships: Valentine's faltering connection with the perverse Michel, Auguste's betrayed relationship with the fickle Karin, and Kern's transformative relationship with Valentine. How easily each could become another. Auguste, a judge by film's end, also spurned in love, and in so many other ways Kern's double, seems primed to replicate Kern's disenchanting life. Just as Valentine, caught in Michel's perverse gaze, might never pierce the veil of inauthenticity but for a chance event, a fateful encounter.

Kieslowski has constructed a tightly woven network of relationships that undergo significant reconfiguration. The nature and meaning of this process of change teaches us about perversion and betrayal in our relations to others and the price to be paid in personal suffering and disenchantment. But another possibility also emerges. By reintroducing the power of love and kindness into Kern's life, Valentine reveals the moment's redemptive potential. And, of course, it is through Kern's reciprocal intervention that

With awe in her voice and face, Valentine says, "What else do you know? Who are you?" The strangeness of Kern's power points toward the uncanny, a species of enchantment.

70. ANDREW, *supra* note 48, at 64.

Valentine comes into Auguste's life, holding out the promise of a more meaningful, more deeply committed relationship than either has known before.

What Kieslowski has done here is to lay out a span of relational norms. They range from the flawed (eros as use and consumption with its attendant features and concomitants: the inauthentic self, the wounded lover) to the authentic (unselfish compassion and authenticating care, as evidenced in the relationship between young Valentine and Kern).

Forces of chance and contingency reign over all. Their central metaphors in the film are the weather report and the slot machine. Kieslowski also uses familiar images to add significance to unstable relationships. For example, Valentine's perverse connection with Michel aptly parallels her part-time work as a model. A successful photo shoot culminates in a twenty-five by sixty-foot-wide advertising banner featuring Valentine's face in profile set against a red backdrop. The ad uses her face to sell a popular brand of bubble gum. "A breath of life," reads the logo. An ironic message, for Valentine does become a breath of life for Kern, though not for her current lover, Michel. Indeed, like Michel's perverse and distant gaze, so too the objectifying gaze of the prospective consumer mocks authentic ("face-to-face") relationships. Here we witness unfulfilled desire being used and used up, like chewing gum perhaps, or like any commodity that we take in and spit out once its use is done. This is how we consume images and objects everyday, for the use-value they offer. The pursuit of self-gratification, trading on a fantasized relationship with the object of one's gaze, serves as an apt model of narcissistic inauthenticity in our relationships with others.⁷¹

Kieslowski similarly presents us with a spectrum of authentic and deficient relational norms in regard to judging. For example, we witness the deficiency of Kern's judgments in connection with his illicit and cynical eavesdropping upon his neighbors. Of his life as a judge, Kern says, "I never knew if I was on the good side or the bad. Who knows if condemnation is more just than mercy? Whatever we say, sooner or later something will happen, all hell will break loose and there's nothing we can do about it." He adds, "Here at least I know where the truth is. My point of view is better than the courtroom." But what purpose can judgment serve when fate remains inscrutable and resists every human effort to make justice rule?

71. The same tempest that brings Auguste Bruner and Valentine together on their trip across the English Channel simultaneously causes Valentine's advertising poster to be taken down. One might say that her inauthentic (commodified) being in the world is now giving way to an authentic ("face-to-face") relationship with someone who is, unlike Michel, worthy and capable of love. Decommodification precedes authentication.

Kern's fatalism induces passivity and cynical indifference. Indeed, even empathy in this dispensation fares no better.

In pure subjectivity the judge who wholly identifies with the fate of the judged becomes forgetful of others. As Kern says, "I'd do the same if I were them . . . and that goes for everyone I've judged; given their lives I would steal, I'd kill, I'd lie." Total empathy with the actor's subjective reality prompts a forgiveness that paralyzes judgment. This too is a form of detachment and indifference, a state of disconnection from the sorrow and pain that has befallen others, perhaps as a direct consequence of what the accused has done. Indifference here is yet another sign of what it means to dwell outside the lived experience of human relationships. Such a life cannot escape the insular world of a particular "I." Only here it is the I fused with the other, an I that could not have done otherwise. In short, the inability to take responsibility for judgment or to consider the impact of acts or judgments upon others characterizes both fatalistic and wholly empathic judging. Both suffer from the insularity of unchecked narcissism.

By contrast, in wiser forms of judgment responsibility to and for the other becomes central. Consider, for example, Kern's first act of judgment: He turns himself in. The first sign of Kern's redemptive transformation is his taking responsibility for his perverse relationship to others around him. Spurred by Valentine's impassioned and unselfish condemnation of his behavior Kern is no longer able to experience the suffering of others as a disembodied spectacle—raw material for his personal amusement. Others are no longer commodities, like Valentine's profile, or the TV images that we watch and discard once their value is used up.

Only when Valentine's revivifying spirit leads him to understand the origin and meaning of his perverse relations with others is Kern able to rekindle his own spirit of care and unselfish fellow-feeling. Only then does he take active responsibility for Valentine, her younger brother, and for others living around him. Indeed, by reaching out to his younger double, by bringing Auguste Bruner and Valentine together, Kern redeems his own life through another's. What was lost to him may now be gained in Auguste's life. It is the quintessential enactment of *agape*.⁷² The shattering

72. See GENE OUTKA, *AGAPE: AN ETHICAL ANALYSIS* (1972); see also EMMANUEL LEVINAS, *ENTRE NOUS: ON THINKING-OF-THE-OTHER* 105 (Michael B. Smith & Barbara Harshav trans., Columbia University Press 1998) ("[I]n the relation of the Face, it is asymmetry that is affirmed: at the outset I hardly care what the other is with respect to me . . . he is above all the one I am responsible for.").

of indifference in the awakening of love for another precedes the possibility of justice and authentic judging.⁷³

Justice in a world of chance and contingency points to life lived amid forces beyond our control, the vicissitudes of desire, rage, love, and compassion. Yet fraternity is built upon contingency and compassion in the face of life's tragic possibilities. As Martin Luther King said, "Whatever affects one directly affects all indirectly. We are all links in the great chain of humanity."⁷⁴ We are interconnected in ways we can barely begin to fathom. At any moment, each of us might become another—an other even to ourselves. Such is the power of chance and fate and the invisible network of seen and unforeseen consequences that bind us all together. Each of us is subject to controllable and uncontrollable forces from within and without. Such is the source of our shared humanity. It is in this sense that we can understand Kieslowski's words when he says, "the life of every single person is interesting if you just look at it."⁷⁵

I believe that Kieslowski's relational vision for law and justice, his ethical universe of authentic ("face-to-face") relationships, models an elementary norm for law. It is a norm that stands apart from the aggregation of individual self-interest as well as claims of systemic rights or entitlements that center upon the autonomous self.⁷⁶ Kieslowski's is an ethical vision

73. See LEVINAS, *supra* note 72, at 108 ("Justice comes from love. . . . Love must always watch over justice."). Emmanuel Levinas and Kieslowski are closely linked in their shared desire to shatter indifference. Compare LEVINAS, *supra* note 72, at xi ("It is this shattering of indifference . . . that constitutes the ethical event."), with ANNETTE INSDORF, *DOUBLE LIVES, SECOND CHOICES: THE CINEMA OF KRZYSZTOF KIESLOWSKI* 181 (1999) ("*Red* is a film against indifference.").

74. Martin Luther King, Jr., *Facing the Challenge of a New Age*, in *A TESTAMENT OF HOPE* 138 (James Melvin Washington ed., 1986). We must also bear in mind here the significant contribution that feminist jurisprudence has made to an ethic of care and compassion. See, for example, the seminal work of Lynne Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987), and Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law*, 87 MICH. L. REV. 2099 (1989). Of particular interest in the context of ethical enchantment is Ruth Colker, *Feminism, Theology, and Abortion: Toward Love, Compassion, and Wisdom*, 77 CAL. L. REV. 1011 (1989), which discusses the importance of aspirational thinking, the authentic self, compassion, and wisdom. On a more cautionary note, it is important to consider the double-edged aspect of the role of emotions in the legal decision-making process. See, e.g., Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361 (1996) (noting that even empathy may have problematic effects under certain circumstances); Neal Feigenson, *Accidents as Melodrama*, 43 N.Y.L. SCH. L. REV. 741 (1999–2000) (describing the dangers associated with personalizing legal blame and enhancing melodramatic effects to trigger jury bias); Neal R. Feigenson, *Sympathy and Legal Judgment: A Psychological Analysis*, 65 TENN. L. REV. 1 (1997) (discussing the danger of producing unfairly biased jury decisions through excessive subjectivity).

75. ANDREW, *supra* note 48, at 71.

76. Cf. Robert M. Cover, *Obligation: A Jewish Jurisprudence of the Social Order*, 5 J.L. & RELIGION 65, 70 (1987) ("Rights, as an organizing principle, are indifferent to the vanity of vary-

inspired by the force of our obligation to the other. The rest follows from this originary, meaning-generating moment. In *Red* Kieslowski conveys an ethos of care and openness toward the other based on the moment's redemptive possibility. In that possibility also lies the power of enchantment and belief—the same mysterious power that impels commitment from within, and that inspires commitment from without. *Red* tells us about the fraternal force, the force of ethical commitment. It signifies responsibility to and for the other. Geoff Andrew's apt summary is worth quoting in full:

We must reach out to others, through love, compassion and understanding, and we should accept that there are bonds between us which we may not fully comprehend; to recognise our common humanity, our equal worth as individuals with our own special needs, desires, fears and responsibilities, is to accept our destiny. Only by accepting the mysteries of existence for what they are can we proceed towards a greater understanding of ourselves and others, unfettered by any notions of ideological or moral absolutes.⁷⁷

Emmanuel Levinas has written that it is before the face of the other that we acquire moral consciousness.⁷⁸ Christian writers speak of *agape*, through which two people meet in openness and affection, aware of one another's inner lives.⁷⁹ And in the Buddhist tradition, we find the word *prajnaparamita*, which means supreme generosity.⁸⁰ These overlapping meanings emphasize the supreme value of the other in the creation of an ethical world, or *nomos*. This ethical vision lies at the heart of Kieslowski's *Red*.

CONCLUSION

Post-CLS scholarship has increasingly turned to the role of law as a meaning-making practice within society at large. As Clifford Geertz noted early on, law is much more than a body of norms, rules, principles, and values. It is "a distinctive manner of imagining the real."⁸¹ Law is not just on the books, or in the gap between books and practice. It is in people's heads in the form of scripted expectations, popular story forms, and recurrent images.

ing ends. But mitzvoths [obligations] because they so strongly bind and locate the individual must make a strong claim for the substantive content of that which they dictate.").

77. ANDREW, *supra* note 48, at 76.

78. See LEVINAS, *supra* note 72, at 11.

79. See OUTKA, *supra* note 72, at 218.

80. See VARELA, *supra* note 58, at 69–70.

81. See GEERTZ, *Supra* note 49, at 173.

A newly emerging cultural legal studies movement embraces, but also takes us beyond, disembodied critical theory. It points toward rich micro-analytic studies of highly contextualized, concrete legal practices. Using a multiplicity of disciplines—such as cultural anthropology, cognitive psychology, linguistics, media studies (including advertising and public relations), and rhetoric—legal scholars are assessing more closely the legal meaning-making process, in court and out. In this view, law is both a by-product and a coconstituent of popular culture; one domain informs and shapes the other.

This cultural approach operates within a postmodern framework, but it resists the skeptical strain in postmodern thought and expression. Rather than deny the contingency and ultimate fragility of meaning, these now become the very conditions that inform our shared responsibility for meaning's construction, maintenance, and change.

To reconceive our legal system along these affirmative postmodern lines requires that we rethink such core Enlightenment ideals as the universality of reason and truth, the stability of the autonomous self, and the presumption of progress that these ideals purportedly guarantee. The priority traditionally assigned to deductive and inductive logic, rationalist agency and calculative reason, must also undergo review so that notions of plurality, complexity, contingency, and uncertainty may be more fully and deliberately considered. In this way, the unduly repressive inclinations of the modern rationalist's mindset may be eased, and the nonrational forces that surge within and around us—fate, chance, fury, and desire—may be more readily assessed as coconstitutive of self, social and legal reality. This too opens the door to enchantment.⁸²

Psuchagogein is the ancient Greek word for “raising spirits.”⁸³ It is a word that evokes the eros of *Logos*, the mysterious power of language itself. It is this power that claims us in words and images—in poetic utterance, the gift of the Muses.⁸⁴ Such words and images instill sorrow and longing, pity and fear, or perhaps joy, pleasure, and ecstatic delight in the heart and soul of the one who listens. And here we approach the essence of the rhetorician's art: to move the soul where he wills.

It is the function of art, poetry, and rhetoric alike to make a particular form of truth (and reason and justice) sufficiently compelling to lead the subject to a specific judgment or course of action in a particular context. It is the particular function of *tragic* poetry and narrative to make the con-

82. See SHERWIN, *supra* note 3, at 205–33.

83. *Id.* at 222.

84. See *id.* at 204 (citing Hesiod on the speech of the Muses).

tingency, multiplicity, and complexity of truth and reason compelling. Indeed, it must do so even in the face of the irrational forces that surround us. Tragic wisdom urges us to critically discern the reality- or meaning-making power and technique of rhetoric, but it also compels us to acknowledge the limits of reason and the contingency of truth and meaning. By describing in dramatic detail the effects of forces like chance and desire on human life, tragic narrative delineates the bounds of rationality. In this way, it invokes a sense of finitude, humility, fear, and pity, and in doing so the tragic perspective brings into focus the shifting patterns of meaning and mystery that rationality and irrationality create in dynamic disequilibrium. These patterns constitute the lived realities of truth and reason, law and justice, in our time.

Robert Cover was surely one of the early advocates of a cultural approach to law and legal meaning-making. Law, he said, is a world in which we live. It is a world that is made up of meanings drawn from shared texts and practices that embody a normative vision. In this sense, we may say, along with Cover, that law plots a trajectory from the present to the future. It is a bridge that crosses over from the present moment to possible futures.

Cultural texts, including film, can provide insight into the ongoing process of world-building. Kieslowski's film *Red* is such a film. It teaches ways of living and judging. The normative vision at work here is neither instrumental nor deontological. It emerges neither on the basis of individual entitlements or some felicific calculus of pleasure and pain. It covets no system of principles from which we may assess how to relate to or judge an other. Kieslowski's film comports with postmodern conditions. In philosophical terms, it is a way of doing theory without foundations. This is what thinkers like Friedrich Nietzsche and Martin Heidegger and Richard Rorty have urged in their work. We must escape the grip of metanarratives, abstract systems, universals, and dogmas of all kind. It suggests an affirmative way to address the vital questions that we face under postmodern conditions: Where do we turn for normative guidance in order to nourish and bind belief? How do we sustain meaningful relationships among others within a meaningful normative universe—within the nomos that we inhabit?

Today, whatever else may be said about the possibilities of enchantment and affirmation, the normative impulse cannot escape or supplant postmodern conditions. The more affirmative kind of postmodernism that I have sought to evoke here offers insights into how we construct meaning in everyday life. It is postmodern in its notion of the way self and social reality are built up from the different stories that we tell ourselves and share with

others in the course of our social and professional practices. It is also post-modern in its recognition of the cognitive habits that help to construct and maintain the diverse microidentities that comprise the self from one context to another. And it is postmodern in its recognition of chance, contingency, and the disruptive, uncontrollable surge of irrational forces both from without and from within.

I hope this begins to suggest what it might mean to adopt an affirmative postmodern understanding of the interpenetration of law and culture. The challenge is to integrate critical constructivist insights regarding how the meanings we live by are made and disseminated (*by whom* and *with what effect?*) with the human capacity to affirm deep cultural values and beliefs. Only then may we avoid the dangers posed by pervasive disenchantment: whether in the form of detached irony or in the modernist mindset's denial of the "magic" or mythic enchantment of words and images.

At the core of Kieslowski's ethical vision is a fraternal force, a force of normative commitment. It embodies our responsibility to and for the other. These fateful possibilities for law's future are hardly reducible to rational calculation, or even to rational principles of autonomy or contract-based entitlement. They point instead to a form of ethical enchantment. This normative vision directs us to the eros of thinking and judging that we find in Michel Foucault and Jacques Lacan and that harks back to early Greek thought as well. It recalls Henri Bergson's and Levinas's immanentist ontology⁸⁵ and the mind's passion to seek meaning and perhaps also wisdom in our lives among others.⁸⁶

Unlike judgments in which the self operates in isolation, disconnected from others, wiser forms of judging make responsibility to and for others the most central feature. This obligation is prior to all contract. And here we may adopt Levinas's crucial correction of Heidegger: It is the call of the other, not the call of Being, to which we owe primary allegiance.⁸⁷ This fateful choice marks the elevation of ethics over esthetics.

85. See LEVINAS, *supra* note 72, at xi ("The main intent here is to try to see ethics in relation to the rationality of the knowledge that is immanent in being, and that is primordial in the philosophical tradition of the West . . .").

86. See RAJCHMAN, *supra* note 31, at 1:

One of the great questions of ancient philosophy was: What is the eros of thinking? What is the eros of the peculiar sort of truth of which philosophy is the pursuit? . . . It is in order to rediscover such questions that I have turned to the work of . . . Jacques Lacan and Michel Foucault. . . [E]ach of them in different ways re-erotized the activity of philosophical or critical thought for our times.

Id.

87. See LEVINAS, *supra* note 72, at 232–33.

To live well in the law we need to affirm and commit ourselves to an ethical vision. This requires more than self-gratification in the here and now. In order to plot law's possible future we need ethical enchantment. We need the force of belief and interpersonal commitment. Demystification is not enough to live on.

In the prologue to his *Prometheus Unbound*,⁸⁸ Shelley gave eloquent expression to this thought when he wrote: "[U]ntil the mind can love, and admire, and trust, and hope, and endure, reasoned principles of moral conduct are seeds cast upon the highway of life which the unconscious passenger tramples into dust"⁸⁹

If we are enchanted with the affirmative ethical vision that postmodern conditions allow, if we learn its cultural texts, including visionary films like Kieslowski's *Red*, and practice its ethical norms in acts of interpersonal commitment, perhaps we can claim its nomos as our own.

88. SHELLEY'S *PROMETHEUS UNBOUND* (Lawrence John Zillman ed., University of Washington Press 1959) (1820).

89. *Id.* at 127.
