Law and the Leaky Woman:  
the Saloon, the Liquor Licence, 
and Narratives of Containment 

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Thinking is periodically nudged, frightened, inspired, or terrorized into action by strange encounters. (Connolly, 2002, p. 94)

In this article, I explore some of the ways in which law and popular culture are jointly implicated in the material construction and maintenance of gendered spaces, gendered bodies, gendered norms and gendered knowledge. I do so through drawing lines of connection between a Canadian tax law case, a nursing mother in a Bristol pub, and Clint Eastwood’s film Unforgiven. This particular suturing of ideas flows from my efforts to make sense of my own experience of a ‘strange encounter’ involving the triptych of ‘bars, breasts, and babies’. This encounter, to which I will return, left me feeling significant friction and disruption, though it was a very ordinary everyday kind of experience. Dorothy Smith emphasizes the importance of treating the everyday world as a ‘problematic’: a place from which questions arise, questions about the social organization that structures our everyday experience (Smith, 1987). The everyday, Smith reminds us, is neither transparent nor obvious; the local is extensively penetrated by multiple processes of material, social and legal organization. (Smith, 1987, pp. 91–92). Understanding the local necessitates thinking across multiple boundaries. Here, I draw from law, feminism, geography, poststructuralist theory, and popular culture. In Part I, I sketch the structuring role played by narratives of
domesticity and jurisdiction in the organization of gendered everyday life, and then recount the story of my strange encounter. In Part II, using that story, I explore the ways in which law participates in the material construction of gendered space through liquor regulations. In Part III, using Unforgiven, I explore the ways in which popular culture, via the deployment of narratives of domesticity and danger, is a co-participant in that same process.

I. Narratives of Gender, Domesticity and Jurisdiction: Headwinds, Force Fields and the ‘Legal/Social’ Divide

Domesticity also affects arenas of life we think of as unrelated to gender. It affects our politics in particularly destructive ways. Its relegation of child rearing to the private sphere intimates that the republic has no responsibility to play in raising its next generation of citizens (Williams, 2000, p. 4)

We must take care to distinguish between effects which are wholly caused, or are contributed to, by an impugned provision, and those social circumstances which exist independently of such a provision. (Symes v. Canada, 1993, pp. 764–765)

Joan Williams has focused attention on the destructive impact of current understandings of gender, particularly at the intersection of productive and reproductive labour (Williams, 1989, 1991a, b). She identifies the existence and persistence of social, legal and economic conditions that are generally hostile to women and men who attempt to find ways to balance work and family. She directs her attention to the material and symbolic factors that function as the headwinds and force fields in which men and women negotiate the terms on which they live in both public and private spaces. These factors include: persistent social narratives about domesticity; current structures of work; legal regimes touching on custody, access and support; and legal and social norms for gender behaviour specific to public and private spheres.

Though many scholars have documented the ways in which public/private divides distribute power and resources inequitably in society (Boyd, 1997), legal efforts to pick apart these divides have had mixed success. Those attempting to use law to readjust the economic costs of gender have often been stopped by legal arguments founded on deep jurisdictional claims about the boundaries of legal authority. Such claims do not deny the existence of inequality, but assert that solutions must be found in social change rather than legal intervention. Consider Symes v. Canada, a high-profile Canadian tax law case, in which the claimant asserted that her childcare expenses should be fully deductible as a business expense. Childcare, she argued, was not a ‘personal’ or ‘private’ expense, but was a necessary cost of business for women (Johnson, 2002). Foregrounding Delaney’s reminder that ‘jurisdiction’ is one of the basic building blocks of liberal legal spatiality (Delaney, 2003, p. 71), consider the jurisdictional justification used by the Supreme Court to deny the claim.
In the epigraph above, the court agrees that women carry the disproportionate burden of childcare. However, it distinguishes burdens imposed by law from those imposed by society. Childcare burdens, it asserts, are socially produced; law has no authority to redress inequity produced in the realm of ‘the social’. This jurisdictional justification allows the court to say ‘not my department’.

A Foucauldian response would shift the focus from a jurisdictional ‘legal/social’ line-drawing exercise, and direct attention instead to the relationship between formal juridical frameworks and ‘the disciplines’: the techniques of micro-power that order human multiplicities; the non-egalitarian and asymmetrical tiny, everyday, physical procedures of partitioning and verticality (Foucault, 1977, pp. 218–224). The disciplines, Foucault asserts, are a type of infra-law which permits the mechanisms of power to operate in a direction other than that suggested by the formal juridical framework. As he puts it:

although the universal juridicism of modern society seems to fix limits on the exercise of power, its universally widespread panopticism enables it to operate, on the underside of the law, a machinery that is both immense and minute, which supports, reinforces, multiplies the asymmetry of power and undermines the limits that are traced around the law. (Foucault, 1977, p. 223)

That is, the disciplines constitute the foundation of the formal, juridical liberties: ‘legal’ rights and ‘social’ disciplines cannot be theorized apart from each other.

Let us return to Williams’ concern with ‘domesticity’, the term she uses to describe our system of organizing work through gender. Three constraints form the core of domesticity’s organization of work: an employer’s entitlement to demand an ideal worker with immunity from family work; a husband’s right and duty to live up to this work ideal; and a mother’s duty to frame her life around caregiving (Williams, 2000, p. 20). Described thus, domesticity is a discipline in the Foucauldian sense: a set of micro-techniques to ensure that certain bodies are in certain spaces doing certain tasks. From this viewpoint, Symes’ point is that ostensibly neutral tax provisions are premised on domesticity’s version of the ideal worker, and function as a mechanism of discipline. The Canadian Supreme Court seemed to acknowledge the operation of domesticity as a discipline, and to accept that domesticity might function to hold current gender inequities in place, but held firmly to the view that such mechanisms of discipline operate exclusively in ‘the social’.

The Pub

Against this background, I turn to the story of the encounter that nudged me towards the juncture of law and film, an encounter structured by both juridical frameworks and the discipline of domesticity. In 1998, carrying a newborn baby, I left Canada to join my partner who had taken a contract in the UK. A few weeks later, Canadian Supreme Court Justice Claire L’Heureux-Dubé came to Bristol to speak at a conference. I had clerked for her some years earlier, and was excited to have a chance to
catch up. She suggested that I bring both partner and baby, and join her for dinner at a great pub she had found. I was hesitant. New to motherhood, I was still feeling awkward both with breastfeeding in general, and public breastfeeding in particular. But I couldn’t see any alternatives. I had an eight-week-old baby who seemed to nurse constantly. If we were to go to dinner, the baby would have to come with us.

We arrived at the scheduled time, and sat at a table in the nearly empty pub. The service seemed very slow. When a waiter finally approached, he told me to leave the pub. The problem? The baby I had been oh-so-discreetly nursing. He was ‘underage’. Their liquor licence was clear: no minors. I was stunned and unable to form a coherent response. The judge, stepping into the void, blurted out in a tone of outrage, ‘You can’t kick her out! That is a violation of her human rights!’ But, as sometimes happens, Justice L’Heureux-Dubé was in dissent. We found ourselves on the street.

In my outrage, I pursued the most typically Canadian of responses: I wrote a letter of complaint to the local licensing authority. I then wrote the experience off as some weird British custom. However, with the arrival of child number two, I discovered that Canadian liquor licensing regimes were in line with their British counterparts: on a house-hunting trip in British Columbia, travelling as a nursing mother with my five-week-old baby, I was denied entry to a lovely harbour-side pub: no minors allowed. This time, I was better prepared to do battle. I launched into legal arguments, asserting that I was being denied a service customarily available to the public on the basis of my gender, or, alternatively, my family status. Further, I asserted, as a matter of statutory interpretation, my voraciously nursing infant was less like ‘a child’, within the meaning of the legislation, than akin to ‘a vacuum attachment’. The waitress remained singularly unmoved by my display of legal virtuosity, and I remained on the outside of the pub.

II. The Leaky Woman Encounters the Law: Thinking Through the Injury

I have told the above tale many times over the years, generally as an amusing anecdote. And yet, with each recounting, I am self-reflectively intrigued to note that the telling invariably brings back to the surface some remarkably intense feelings of rage, humiliation, and grief. One question I have returned to again and again is: why did the experience feel so injurious and wounding (Johnson, 2004)? Part of the answer is found in an examination of ‘the law’ that kept me out. The formal legal regime at the heart of my experiences of expulsion was similar in Britain and Canada. In both locations, I had failed to attend to the distinction between ‘the restaurant’ and ‘the public house’. While both restaurant and public house serve food and liquor, children can be present only in the former and not in the latter. In most Canadian provinces, the distinction between the two turns in large measure on questions of ‘purpose’: while both restaurant and public house serve food and liquor, children can be present only in the former and not in the latter. In both Bristol and British Columbia, in my quest for a meal, I had attempted to take my child across
the threshold of the public house. In both locations, the law intervened to prevent me from doing so.

The expulsions felt like moral regulation. But what was being regulated? In the British Columbia Liquor Licensing Operating Manual, the education and protection of children are articulated as central rationales for the licensing regime: ‘The Act reflects a generally held view in our society that early exposure to alcohol consumption and the teaching of appropriate drinking behaviours are best provided in the home under the guidance of parents or guardians.’ My parenting behaviour was being regulated. If I couldn’t be trusted to know the appropriate rules, the law would intervene through a policy of containment and to ensure that I remained with my children in my proper place.

Part of my outrage was directed at the disciplinary moment in the experience of expulsion and containment. One of my responses to this moment was to take issue with the policy itself. On what basis had it been determined that the teaching of proper drinking behaviours could happen in the licensed restaurant, but not the licensed pub? If the fear was irresponsible drinking, then why not just prohibit giving alcohol to children? If the fear was that children would see irresponsible drinking, then why not prohibit irresponsible public drinking? If the fear was with what children saw, then why exclude my five-week-old baby? At best, the exclusion of all children from the pub seemed overbroad; at worst, a fraudulent cover for other aims.

While my partner would also have been denied entry had he been travelling alone with the baby, the fact of my being a nursing mother put a certain kind of biological spin on the exclusion, an exclusion I experienced on a visceral bodily level. Our second child was born with violent allergies to both milk and soy. Formula was not an option. He needed to be breastfed. And the need was not only his, but also mine. I understood all too well that I was not just ‘The Edible Woman’ (to steal Margaret Atwood’s book title); I was also ‘The Leaky Woman’. Were I to go anywhere without him, I would have limited time available before the milk would flow on its own. I needed to remain proximate to my child in order to avoid both the physical discomfort of engorgement and the ever-present risk of social embarrassment due to my ever-leaky body. And so, embedded within the gender neutrality of ‘parenthood’, was that annoying lingering ‘kernel of the real’ that could not be so quickly discounted.

And yet one can nonetheless return to the point: there is nothing in the licensing regime that targeted me as a specifically embodied woman for exclusion from the space of the pub. Certainly, this is a change from earlier regimes in which liquor laws explicitly designed to construct and maintain gendered spaces. At the time of the temperance struggles, for example, male public drinking (whether in high-status men’s clubs or lower status saloons) was a potent badge of masculine identity, and both the men’s club and the saloon were strictly male spaces (Murdock, 1998, p. 14). While social dictum would have kept most respectable women out of such places, the gendering of these spaces was also enforced by gender-specific law and policy (Gutzke, 1994). As with gender, so too with race: liquor licensing regimes have played an influential role in creating white supremist colonial spaces (Mawani, 2002).
But contemporary struggles over discrimination have led to the dismantling of most formal barriers to entry, whether to politics or to the pub. The new law, one might say, is an exemplar of formal equality. It is only the gender-neutral child who is excluded. Such a policy will necessarily exclude any adult with whom a child is travelling, but the point is not to enforce gender roles but only to protect and appropriately educate the child. And even were one to conclude that more women than men were excluded, one still might say ‘So what? Big deal. This is only about temporary restrictions on entry to the pub.’

But the space of the pub is worth a closer look. As Nick Blomley notes, many legal actors ‘fail to recognize the profound importance of space in the regulation of social life’ (Blomley, 1994, p. 25; Rose, 1993; Valentine, 2000; Bell & Valentine, 1995). Alcohol, space and politics have often been intimately related (Murdock, 1998, p. 10) and the issue of access to the pub is not only one of access to leisure but also of access to social capital and power (Valverde, 2003; Rigakos, 2003). In our society, mechanisms of discipline and normalization spatially place children more often in the care of women than of men. As Foucault pointed out, the disciplines operate as an ‘infra-law’ which permits power to operate in a direction other than that suggested by the formal framework, and ‘space’ is fundamental in any exercise of power (Foucault, 1984a, p. 252). Because of the social reality of the ways in which we currently experience the division of labour around issues of the family, the neutral rule produces gendered space.

Both space and the terms upon which we occupy it are fundamentally related to the materiality of the body itself. Spatial control is ‘a fundamental element in the constitution of gender in its (highly varied) forms’ (Massey, 1994, p. 180). That is, we come to be in certain ways, and our place in space is part of what tells and makes us who we are. For women, restrictions on mobility have played a large role in telling them who they are in society: ‘The limitation of women’s mobility, in terms both of identity and space, has been in some cultural contexts a crucial means of subordination’ (Massey, 1994, p. 176).

And yet one can anticipate two kinds of legal responses to claims about the inequitable gendering of the space of the pub. First is the jurisdictional response we saw in Symes. This response authorizes the drawing of distinctions between the spaces of law (where courts rule supreme) and the spaces of the social (where courts are said to be powerless). In the context of the gendered geography of the pub, one might concede that the space of the pub is marked by gender, but find those markings to be a production of ‘the social.’ Certainly, one could recount myriad tales of informal and complicated processes of discipline, and the space of the pub might well remain a gendered space even in the absence of legal restrictions on access. And yet to concede the jurisdictional argument too quickly is to skate over the ways in which legal rules participate in the production of gendered spaces, bodies and norms (Chunn & Lacombe, 2000).

This brings us to a second legal response: to accept that the regulation produces gendered space, but to conclude this gendering is a small price to be paid for the harm
avoided. Here, the response focuses on the policy justification for the rule: the protection of children. The policy points to the destruction caused to society as a whole by alcohol abuse and irresponsible drinking behaviours by children. That some women sometimes find themselves excluded from the space of the pub, some might argue, is not too high a cost in light of the danger avoided.

III. Constructing Law’s Common-sense Knowledge: Bars, Breasts and Babies in Popular Culture

No law or institution exists apart from the narratives that locate it and give it meaning. (Cover, 1983, p. 4)

Concrete spaces are produced through an interaction of material and symbolic forces. In trying to understand the operation of the pub as a legal space, it is not enough to consider formal regulatory regimes. It is also necessary to think about the socio-legal imagination that governs how those spaces are conceived of by law in the first place (Razack, 2002, p. 5). It is crucial to attend to the stories we tell about those spaces—the stories that render legal regimes explicable: ‘embedded within law are a rich and complex set of maps of social life’, maps which often remain unexamined and taken for granted (Blomley, 2003, p. 54), presumed rather than articulated in legal texts with the kind of detail that one would find in more explicitly narrative sources.

In her examination of liquor licensing regimes, Valverde demonstrates that knowledges of ‘urban disorder’ and ‘the risks of public drinking’ have long been deployed to effect and to justify pub licensing (Valverde, 1998, 2003). She also shows that regulatory liquor licensing regimes have been justified and implemented not on the basis of statistical or empirical knowledge of risk and danger but on the basis of ‘commonsense knowledges’ of risk and danger that circulate in the stories we tell and retell. In this sense, a large part of legal knowledge is located beyond the boundaries of the legislative/regulatory text—popular culture is legal text.

This leaves us with pressing reasons to attend to popular narratives, and, indeed, to popular film, the most broadly consumed source of storytelling in contemporary society. Film is a powerful repository of ‘maps of social life’, of ‘common-sense knowledge’, and can give us insight into persistent contemporary struggles about the organization of gender in family and social life. With its ability to make its stories and characters hyper-visible, film participates in the process of both constructing and challenging ‘the normal’ (Johnson, 2000). It is a vehicle which trains us in the substance and techniques of judgement itself: through film, we learn how and who to judge (Kamir, 2000a, b).

Here, I consider Clint Eastwood’s 1992 Academy Award-winning film Unforgiven. The core of the story is relatively straightforward. Two cowboys are involved in the brutal slashing of a ‘whore’ in a saloon. Sheriff Little Bill requires the cowboys to compensate the saloon owner, Skinny. The other prostitutes, unsatisfied by the punishment, pool their resources, and place a bounty on the heads of the cowboys.
Unforgiven is not primarily ‘about’ the geography of the home or pub, but this is part of what makes it useful as a vehicle: when looking for common knowledge, one is often well served to look via ‘indirection’, in the places where knowledge is assumed rather than contested.

While there are many other films one could study, I have chosen Unforgiven partly because it is a film I love, but also because it is a contemporary iteration in the Western genre, a genre that has paid particular attention to questions of gender, domesticity, and the frontier spaces of the home and the pub. First of all, the elaboration of domesticity is one of the Western’s foundational concerns. The family was the most significant social institution on the frontier, and domesticity was a central concern, not just a way of organizing work between men and women (Handley, 2002). The Western genre rested on the presumption that marriage of the proper sort could create the right kinds of citizens. The excising of violence, the bringing of civilization and the founding of the nation were tasks that required the right sort of woman in her proper place (Buchanan & Johnson, 2005). As Anthony Mann puts it: ‘without a woman, the story wouldn’t work’ (Bellour, 1988, p. 187). Second, in the Western, the action takes place in three iconic locations: home, saloon, and frontier (Slotkin, 1992; Tompkins, 1992; Wright, 1975). Because the women we encounter in the Western are located in two of these places (the home and the saloon), the Western is a particularly apt place to look for common-sense knowledge about these locations and their occupants. And finally, as a contemporary Western, Unforgiven reshapes the central themes of the genre in line with the anxieties and concerns of our own times. In it, we can see how domesticity is worked out in our current common-sense imagination, how we currently imagine and materialize ‘the saloon’ and ‘the home’ as certain kinds of locations, as material spaces in which women and children do (and don’t) appear.

The Space of the Saloon

As a marker of difference and an indicator of respectability, space cannot be underestimated as a sign of personhood. (Schick, 2002, p. 101)

Viewers are introduced to the space of the saloon in the early minutes of the film. We see a wide shot of ‘Big Whisky, Wyoming, 1880’. The sky is filled with ominous clouds, with the mountains looming darkly above. We hear a roll of thunder. The next shot draws us into a dark town. Our ability to see is obscured by the pounding rain, but a ‘Saloon’ sign becomes visible. We hear a guitar, and, as the camera draws us up to the right, we see the silhouettes of a man and woman standing in front of a window, sharing a drink. To the sound of squeaking bed springs, the camera draws us up the stairs, and cuts to an indoor shot of an upstairs bedroom, where young and fresh-faced cowboy Davey is engaging the sexual services of Strawberry Alice.

To this point in the film, some elements of common knowledge are already apparent: in the saloon, liquor, leisure and sexuality are linked. The semiotics
of the scene leave no doubt. The darkness, thunder, and rain infuse the space with a sense of foreboding. This connection to danger is made more explicit within moments as we witness a cowboy violently attack a prostitute who giggled at the small size of his penis. The saloon is pictured as a site of random explosions of violence, asserting this both through the narrative and through specifically cinematic devices that generate physiological responses in viewers (Johnson & Buchanan, 2001; Rutherford, 2003).

Recall that in the upstairs room, viewers are, like Davey, interrupted in their pleasures by screams, the sound of breaking glass, and the voice of a man yelling for Davey. The camera follows Davey and Alice as they scramble next door, where the space immediately becomes one of confusion and violence. Delilah is throwing things across the room, desperately trying to hold off the burly and half-naked Mike, who is wielding a knife. Unclear as to what has happened, viewers are confused and destabilized by frantic camera movements, and rapid editing cuts. At one moment we are viewing the scene from the doorway, at the next, from the opposite side of the room. Bodies are thrown in front of us, and we find ourselves tossed back and forth, screams and yells coming from different directions. Mike makes several violent slashes across Delilah's face and body, and the sound of his knife is distinctly amplified.

As the violence escalates, viewers find themselves in the physical space occupied by Delilah, helpless and trapped on the floor, Mike's rage-distorted face looming ominously above, knife poised for a final violent sweep. To this point, the film has deployed sound, shifts in camera angle, and rapid cuts to perform the violence of the scene in ways which generate bodily responses of anxiety and confusion: a filmic fight-or-flight response and an embodied knowledge that the saloon is a site of danger. The cinematically constructed state of confusion and panic finds exquisite relief at this very moment. Both the camera and Mike are thrown into sudden attentive stillness by the sound of a gun being cocked against Mike's temple, and the voice of the saloon owner, Skinny, telling Mike to back down.

What role is played by the law in regulating the violence of this space? When Sheriff Little Bill arrives on the scene, Skinny wrests our attention from Delilah's bleeding body, characterizing himself as the injured party: 'This here is a lawful contract between me and Delilah Fitzgerald, the cut whore. I brought her clear from Boston, I paid her expenses and all, and I've got a contract here that represents an investment of capital.' 'Property', Little Bill notes. Skinny adds, 'Damaged property'. Sheriff Little Bill accepts Skinny's characterization of the injury, directing each cowboy to pay a number of ponies to Skinny. In so doing, the Law inscribes the prostitutes as objects, the property of the saloon owner. The erasure of their personhood is linked to the role they play in the sexualized economy of the saloon. The Law, contaminated by contact with the space of the saloon, is the purveyor of gendered injustice.

In giving us a performance of the saloon as a site of gender inequality, the film both draws on and critiques the 'common knowledge' that sexual women are bad women. Viewers are positioned, like Strawberry Alice, to be outraged by the denial of
the women’s dignity—by a law that would withdraw protection from women because of the work they do within the space of the saloon. Like Strawberry Alice, we seek justice. However, by setting the stage for a gender war in the space of the saloon the film relies on common knowledge that such spaces are likely producers of inequality. While the film positions us to reject the inequitable treatment of the women, it leaves other pieces of 'common knowledge' about the saloon unquestioned. It naturalizes the notion that there is a close connection between liquor and sexuality, and that the saloon, as a space of sexual negotiation, is one of inherent risk. Our attention is taken off that initial construction, and directed to questions of after-the-fact reparations.

Note too that while the film explicitly challenges the view that the women in the saloon are second-class citizens, the shape of the narrative re-inscribes the prostitutes as problematic subjects. It does so first by excising the suggestion that any of the women is a mother. There are no children visible in the saloon, or the small home in which the prostitutes live. While we do see the women functioning in non-sexual contexts, we do not see them engaging in anything that remotely resembles childcare. The absence of children here re-inscribes the view that such women cannot care for children. While the film asserts that an injustice has been done to the prostitutes, there is no suggestion that the absence of children from the spaces in which the women live is part of that injustice.

The film further undercuts our sense of identification with the women by distancing us from their strategy for re-inscribing their personhood. While we share their desire for justice, most viewers experience some discomfort with the bounty, which is not justly measured, particularly not with respect to Davey, who had tried to stop Mike. Davey’s attempt to make direct reparations to Delilah herself is rebuffed by the other prostitutes, who drive him away, throwing rocks and yelling ‘She ain’t got no face left, you’re going to give her a god damn mangy pony?’ The scene leaves viewers feeling that Delilah has been further victimized, this time by the women. The scene in which Davey is subsequently killed is one of the most upsetting moments in the film. Shot in the gut, he dies slowly, crying and begging for water. The scene is unbearably realistic, allowing the viewer no distance from the event. Clearly, the prostitutes have targeted at least one innocent person, and unleashed a further wave of violence and injustice.

Thus, the film both challenges the notion that the women are unworthy of respect and yet has them perform in ways which portray them as incapable of knowing the limits of justice. We are conflicted. Our ambivalence about the women fits with their connection to the saloon, a site of sexuality and danger, and a traditional location for dangerous women. Still, we remain positioned to desire justice and retribution. Before the end of the film, retribution will come, and William Munny (Clint Eastwood) will be its agent. But this leaves us with a puzzle. How is it that justice can be delivered via a man who is first presented to us as ‘a known thief and murderer, a man of notoriously vicious and intemperate disposition?’ The answer to this question requires us to turn to the second of the two spatial locations so integral to the storytelling—the home—and to the woman who occupies it, Munny’s wife, Claudia Feathers.
House and Home

My wife, she cured me of that, cured me of drink and wickedness. (William Munny in Unforgiven (1992))

Unforgiven begins and ends not in the saloon but in the home, focusing our attention on Claudia. The narrative framing makes it clear from the beginning that home and marriage are at the heart of the story being told, and that Claudia, though dead, is central to the unfolding and resolution of the story. Using the structural device of a framing story, the movie begins and ends with two variations of the same scene: a backlit long-shot of a homestead on the desolate prairie. The silhouette of a man can be seen digging a grave while a lonely guitar melody plays, and the following text scrolls across the screen:

She was a comely young woman and not without prospects. Therefore it was heartbreaking to her mother that she would enter into marriage with William Munny, a known thief and murderer, a man of notoriously vicious and intemperate disposition. When she died, it was not at his hands as her mother might have expected but of smallpox. That was 1878.

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

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

The question may remain unanswered for Mrs. Ansonia Feathers, but as viewers we are positioned to pose the question somewhat differently. Focused on the injury done to the prostitutes, and the demand for justice, we are positioned less to ask why Claudia married Munny, and more to ask what it is that Claudia—a proper woman in her proper place—makes possible.

The film situates us with respect to this latter question by starting the story in ‘the home’, but a home without a woman. We are positioned to mourn the loss of Claudia. Setting, light, colour, and music combine to produce a sense of loss, longing, and desolation. The loss of Claudia is made manifest in the space of the home, a home characterized by a palpable lack. Though clean, it is spartan. Beside it, there sits a barren tree. The visual palette is one of dust, mud, and colourless light. The wind blows constantly across the open expanse, and the sky seems to bear down and compress the space. The children are clean but threadbare, and the hogs are sick. As the Kid (a would-be-murderer-for-hire) puts it to Munny, ‘you don’t look so prosperous’. With his wife dead, Munny must be both breadwinner and caregiver. The homestead is its own proof that he is having difficulty doing both jobs. The home is suffering from the lack of the wife and mother who should be there. This lack is foregrounded through comparison.
with the homestead of Munny's former partner, Ned Logan. Ned lives with his Indian wife Sally Two-Trees. The home is nestled in a lush valley, surrounded by leafy trees. The sounds of crickets and birds fill the air, a stream flows nearby, corn reaches to the sky, colourful jars of preserves are set side by side on the counter, and curtains hang in the windows and between rooms. The light-filled interior of the house feels inviting.

The contrast of houses and wives shows us both that a home needs a woman in it and that if the home is to be not merely hospitable but also transformative and generative it needs the right kind of woman: one who can transform its occupants for the better. Claudia, though dead, is shown to be such a woman. The opening scene positions us to expect Munny to be 'a man of notoriously vicious and intemperate disposition.' Our expectations are destabilized. Instead, we see a gentle and mild farmer, attentive and kind to his children, working alongside them, and encouraging them in right behaviour. He does not drink, curse, whip horses, or raise his voice. If he was once 'a crazy killing fool', Claudia changed all that: 'I ain't like that anymore. . . . My wife, she cured me of that, cured me of drink and wickedness.' Though 'displaced' through death, she remains very much present in the home, and her moral order continues to govern Munny's behaviour and character. He does not visit the brothels: 'it ain't right, peddling flesh. Claudia, God rest her soul, would never want me doing something like that, me being a father and all.' Claudia's order, if placing limits on Munny's behaviour, does not imply disrespect of prostitutes. Indeed, she has produced the only man in the film who can see the essential personhood and dignity of the women working in the saloon. This is particularly evident in the scene in which Delilah makes the offer of a free one to Munny. He responds saying, 'if I was to want a free one I'd want it with you, I guess, more than them other two. It's just that I ... I can't on account of my wife.' Claudia's power of transformation has produced a man who can tell a partial truth in order to restore the self-worth and dignity of a disfigured prostitute.

The right kind of man is produced by the right kind of woman. Such a woman keeps herself and her family away from the dangerous and contaminating spaces where liquor and sexuality mix together. The film suggests that Claudia becomes the kind of person capable of exerting these transformative powers precisely because she has remained outside of those tainted spaces. In a darker vein, the movie implies that the right woman is a white woman. In its portrayals of Claudia and Sally Two-Trees, the film draws on a current of racist 'common sense knowledges' that continue to inflect 'western' narratives (Wexman, 1993, 89–105). Certainly, Sally is not shown to have transformed Ned. Of the bounty-quest, Ned says to Munny: 'You wouldn't be doing this if Claudia was alive.' And yet, though Sally is alive, Ned does join the quest, even over Sally's clear expression of disapproval. Sally's power is also insufficient to dissuade Ned from enjoying free ones from the prostitutes after a mere week away from home. Further, while Munny and Claudia's union produced two children, Sally and Ned's is barren.

Earlier in this discussion I pointed out certain ambivalences in the film's treatment of women in the saloon. A similar set of ambivalent moves marks the home and its occupants. The first involves the question of the care of children. Here, the film draws
on two contradictory narratives. The first is a gender-specific traditional one which asserts that mothers and fathers play very different roles, and that small children need a mother in the home. The second narrative speaks in the language of gender neutrality. Adopting the term ‘parent’ rather than ‘mother’ or ‘father’, it asserts that men and women are equally able to care for children. The film positions us to accept Munny as a gender-neutral single parent. But we experience some dissonance. It is troubling not only that Munny decides to earn money through contract killing, but also that he leaves his two small children unattended on a lonely prairie farm. We cannot imagine Claudia acting similarly. Though we are sympathetic with his (gender-neutral) parental desire to give the children a fresh start, his choices reinforce the belief that children are better served by ‘a mother’ than by ‘a father’.

Our second set of ambivalences concerns the (in)adequacy of a woman’s capacity to transform a man. The tale weaves our desire for justice together with the story of a man transformed from notorious killer to civilized man and father. While it foregrounds the wife’s powers of transformation, it also positions us to experience some discomfort with the ‘transformation’, and to see the new Munny as an emasculated version of his former self. Claudia’s work on Munny, while necessary, is not sufficient. For justice to be done, Munny must step outside of the limits of Claudia’s moral order. The bottle of whisky opens the door for the return of the darker part of Munny, the ‘unforgiven’ element that must be called upon in order to do what needs to be done. The story suggests that for justice to be done, a certain kind of man is required: an ‘outlaw’, one who has lived in the spaces of contamination, who has been transformed, and who can reach back into the heart of darkness to do what must be done. The violence he then does may be ‘wrong’, but it is a wrong that can be justified (if not forgiven).

The film articulates the contested shape of our contemporary common knowledge about the saloon, the home, and the kinds of people who should be in both places. Unforgiven critiques the unequal treatment of women in the saloon, and asserts that (working) women are entitled to justice. It does not, however, critique the socio-legal construction of the saloon as a site of danger. Instead, it gives us a set of stories which link alcohol with sexuality, violence and death. The film asserts that women should be liberated from actions and laws that deny their humanity, but also makes their liberation contingent on the intervention of a good man. The production of such a man is made possible by the right kind of woman in her proper place: the good, white, pure, understanding, forgiving, self-sacrificing mother in the space of the home. She understands that children are best raised in the private, and that her work in the home makes possible the reconstruction of otherwise uncivilized and dangerous men. The liberation of the prostitutes is thus made possible only through Claudia’s ideological containment in the space of the home. Even in the face of a narrative supporting gender-neutral equality, the film provides a counter-story which affirms different roles for mothers and fathers, and suggests that the equal treatment of the sexualized/public woman requires that at least some other women are willing to
remain with children in the private realm. Certainly, while the movie can be read as either freeing up the prostitutes or leaving them in the same place, both readings leave Claudia where we found her: at home/in the grave. The woman who is dead, who remains unseen, nonetheless is both the puzzle and the answer. Claudia, the proper wife, the proper mother, located in the home, functions as a kind of transcendent ideal that holds the entire story together. To rework Anthony Mann's phrase, without this woman 'the story wouldn't work'.

IV. Conclusion

The power exerted by a legal regime consists less in the force that it can bring to bear against violators of its rules than in its capacity to persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live. (Gordon, 1984, p. 109)

And so I return to the beginning and a moment of friction between my expulsion from the pub and Clint Eastwood's *Unforgiven*. This friction that led me to think about the ways in which regulatory regimes and popular films jointly participate in the construction and maintenance of gendered spaces. The licensing regime functions as a corporeal discipline which produces outcomes which run contrary to the principles enshrined in the formal juridical guarantees of liberty and equality. But where people are shown that the regime produces gendered effects, they (like the Canadian Supreme Court) helplessly shrug, arguing that the result is unavoidable, and perhaps even necessary. I suspect that this response is so common because at the base of the regulatory regime's gender-neutral commitment to 'children' is a powerful set of stories about threat and danger, stories that see the pub/saloon as a site of danger and contagion, a site of wickedness, sexuality, liquor, violence, lawlessness, and death.

Films such as *Unforgiven* provide an occasion for exploring the images and symbols through which we perceive ourselves to come to 'be' in certain *places*, and of the ways in which the pub is (not) a space for women. In both the liquor licensing regulation and the movie, we see the presence of contestation, moments at which a formal commitment to gender-neutral equality runs up against other more gender-specific stories. Both the regulation and the film are premised on the belief that children should be in the home. Children are the ideological marker of possibility, and are linked very closely to the mother. These stories tell us that men are more dangerous than women. They also tell us that men can be tamed if they are transformed into fathers by good women. The contact of men with the saloon, while involving an element of danger, makes possible the production of men strong enough to meet and combat the violence of other men. The stories tell us that women can, at their own risk, venture into such spaces, but that they ought not where they carry the traces of maternity. Mothers and children need to be distant from the pub not only for their own protection but also so they can act as ideological role models, sites of moral improvement, the foundation of all that is good in society. Such stories make it possible for us to tolerate certain disenfranchisements,
to accept gendered spaces, and to maintain the headwinds and force fields of domesticity’s disciplinary regime.

My argument is not that movie viewers are ‘cultural dopes’, unreflectively absorbing subliminal messages hidden within movies (Hall, 1982, at p. 56; Brunt, 1992). Certainly, movies (like court judgments, legislative texts, and regulations) are texts to be interpreted, with the resulting slippage that always entails. And further, filmic texts operate in many directions. As David Bordwell puts it: ‘narratives are composed in order to reward, modify, frustrate, or defeat the perceiver’s search for coherence’ (Gianetti & Leach, 2005, at p. 35). But taking all this into account, movies are part of the body of authority that shapes ‘common knowledge’, part of the body of authority that grounds the more formal structures of law which continue to reproduce gendered spaces and gendered imaginations. Popular culture is an arena in which common knowledge is deployed, contested, and modified.

The power of law, Gordon reminds us, lies less in its ability to coerce behaviour than in its ability to persuade us that the world described in its images is the only world in which we would want to live. In this sense, it is important to think about the structure and location of ‘law’ more broadly. If we acknowledge that space is lived through its associated images and symbols (Lefebvre, 1991, p. 7), we should take seriously the interactions of regulatory legal regimes with popular culture. We need to be alert to the operation of power in its productive forms, and to remember Foucault’s insight that if power were only repressive, no one would be brought to obey it. Power can matter and hold us because ‘it traverses and produces things; it induces pleasure, forms knowledge, produces discourse’ (Foucault, 1984b, p. 61). Popular culture is a site of both pleasure and productive power, and film provides us with a useful locus for studying the concrete operations of power: its specificity, its techniques, and its tactics. Popular film partitions and divides, and makes the structure of gender hyper-visible. It draws on narrative and cinematic tools to provide viewers with maps setting out appropriate places for them to be, providing guidelines and limits (particularly with respect to women) about the ways in which life is to be lived in these various locations. The intricate relationship between legal and popular cultures produces the physical spaces in which we live, sometimes through formal mechanisms of exclusion but also through stories which induce us to bring our own behaviours into voluntary compliance with domesticity’s norms. The exclusion of the child from the pub operates to press some kinds of women back towards the home (Iyer, 1997). It is one form of discipline operating through a set of stories which explain why the world must be a certain way. But these stories could be told otherwise: Clint Eastwood and the leaky woman could indeed have a lot more to say to each other.

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Notes


[3] The fear of just such an experience is very real to any woman who has nursed a child. Lawyer Elizabeth Cusack-Walsh, then the nursing mother of a three-and-a-half-week-old baby, writes about the experience of being in a trial, and having the judge refuse her a lunch break long enough to go home and nurse her child. She writes:

By mid-afternoon I was in deep distress, mentally and physically. Milk began spurtng through my clothes, all over my cross-examination notes. The courtroom was crowded with spectators. I was standing, cross-examining an RCMP scientist on a very technical point. The judge was enraged when I requested a few minutes adjournment. When he cooled down, I explained that I was leaking milk, that my notes were wet and that I would like a few minutes to deal with the situation. The justice remembers the incident as a joke. I remember how women and motherhood were degraded." (Harris, 1992, p. 46).

In such a context, Jenny Nedelsky's brilliant work (1989, 1990) on the porosity of bodily boundaries takes on a rich set of meanings.

[4] The experience clarified for me the necessity to take seriously the implications of physical embodiment for equality and neutrality. For a particularly illuminating discussion of embodied imaginations, see Sobchack (1999, p. 45).

[5] I have countless stories of attempting to nurse in public places, and of having people approach me to let me know there was a 'mother's room' available on another floor. Frankly, it was always difficult to know what to make of these interventions. Certainly, while touring the National Gallery with my baby, I didn't see why I should spend twenty minutes sitting in a bathroom nursing a child and staring at the wall and stalls, when I could be doing the same thing while taking in the museum's collection of paintings. There were undoubtedly people who were offering the information in the spirit of helpfulness, worried that I was uncomfortable and searching for a quieter space. But there were also those who were clearly uncomfortable with my presence in the public space, and who were worried primarily that my presence would cause discomfort to others in the area. The interventions were complicated by the additional detail that sometimes the interveners were 'ordinary' people, and sometimes were people with some 'formal' status at the location: security guards, sales clerks, ticket takers, art gallery attendants, food service personnel. It was difficult to know whether they were simply offering personal advice, or enforcing a law or policy of the institution itself. I didn't know whether I should thank them politely for thinking about my comfort but explain that I preferred to remain where I was; just ignore them; retreat to a less comfortable environment if the discomfort I was causing to others was too extreme; or engage in civil disobedience. Every intervention, whether good intentioned or not, reinforced a regime in which my presence in public space was an issue of some sort. Even without laws in place, it was often simply easier to restrict my own mobility than to negotiate the terrain of social (and possible legal) discomforts and punishments.

[6] Coming at this from the opposite direction, one could, with Steve Redwood, speak of 'the disappearance of law into popular culture' (Redwood, 1995, p. 6).

[7] In the rest of this paper, I have agreed to use the word 'prostitute' rather than the word 'whore' to refer to the women working in the saloon. However, this is a choice I continue to struggle with, and thought it worth making the reasons for the struggle more explicit. First, like many of those who critiqued my word use in earlier drafts, I feel some discomfort with the word 'whore'. However, it is nonetheless the word used by all of the characters in the diegetic world of the film
to refer to the women. It is the word used by the women to refer to themselves, and is a central term in the title of the original script, “The Cut-Whore Killings”. Of course, the term ‘prostitute’ better reflects common parlance. And yet, there are some important distinctions that can be drawn between the words ‘whore’ and ‘prostitute’. In particular, the term ‘prostitute’ focuses attention on the transactional nature of a sex/money exchange, and does not necessarily imply anything about the moral character of the person on the ‘selling’ side of the equation. That is, it tends to focus our attention on what they do, rather than who they are. The word ‘prostitute’ is a cleaner, more sanitized, more politically correct term, one which carries quite different valences from the darker, more morally loaded term ‘whore’. But the multiple valences of the term ‘whore’ may better capture something both of the gendered structure of the film itself (with its women cast in the archetypal roles of ‘madonnas’ or ‘whores’), and of our ‘common knowledge’ about the moral characters of different kinds of women. In short, the inclination to veer away from the film’s of the term ‘whore’ is worthy of further critical analysis.

[9] Foucault reminds us that the panopticon is a political technology that can be detached from any specific use. Central to the panopticon are the principles of partitioning and visibility: ‘a certain concerted distribution of bodies, surfaces, lights, gazes’. In essence, ‘panoptic modalities of power’ operate where individuals are subject to high degrees of visibility and surveillance. See Foucault (1977, pp. 202, 205). The concrete experience of film viewing, with its operations of identification, is one in which we have the imaginative experience of placing ourselves in the films, of being the one who is viewed and judged, as well as the one who is doing the viewing and judging.

References


