Knowing It When We See It
Realism and Melodrama in American Film Since
The Birth of a Nation
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Carol Clover's theory that the "narrative machine underneath the manifest plot" of most movies, whatever their genre, "is the trial," has proven enormously appealing to those of us who think about law and culture. On Clover's account, Hollywood films and Anglo-American trials have the same basic structure: an examination of the facts bookended by opening and closing statements driven by the "engine" of cross-examination and governed by the rules of evidence. But her account leaves a number of questions unanswered. What "rules of evidence" do movies follow? What kind of truth does the formal "engine" of cross-examination produce in film? How do films affect the expectations of jurors, the practice of law, and our attitudes about law more generally? If, as Clover observes, the trial that the jury/audience sees may get "lots of things wrong" in terms of law and procedure, but "gets some things, including the underlying epistemology, exactly right," what is that underlying epistemology? If American movie audiences are always in some sense jurors, who or what is on trial?

Several recent documentaries suggest that the answer to the last question may be the trial itself. These documentaries—notably The Thin Blue Line (1988) and The Central Park Five (2012)—orchestrate alternate trials apparently unhindered by the procedural and institutional liabilities that led to wrongful convictions. But it is not only documentaries that offer alternate trials. Law-themed films in general take up social problems with regard to which law has been unsatisfactory and try the question on different terms. Think of Kramer vs. Kramer (1979), which counters the "tender years" doctrine (favoring the mother) with the intimate bond forged between a father and son, or Philadelphia (1993), which counters the narrowness of legally provable discrimination with the experience of a loving partner and beloved son facing prejudice at every turn because he happens to be a gay man suffering from AIDS.

Indeed, in the cinematic imagination, official law is indifferent, bureaucratic, and corruptible, constantly threatening to produce injustice. In con-
trast, "justice" is individual, unambiguous, and readily accessible. As a result, seeing justice done often requires extralegal intervention. Films offer alternate trials in which apparently realistic but emotionally charged representations of personal experience, rather than legal procedure and evidentiary standards, determine guilt or innocence. And while this formula is conspicuous in law-themed films, it is also present in action movies, dramas, and thrillers. Think of Renault's decision to turn a blind eye to the Nazi Strasser's death at the end of *Casablanca* (1942), or undercover cop Brian's decision to let the criminal but morally upright Dom escape at the end of *The Fast and the Furious* (2001). The fairness of the verdict in the filmic alternate trial is measured not by the standard of due process but by the viewer's moral sense.

My point is not that trials are limited by procedure in ways that films are not. Rather, as Clover suggests, in both trials and films, getting the verdict right depends on the ability of the jury/audience to know the truth when we see it. Clover attributes the "rhyme" between the "narrative substructure" of the Anglo-American trial and American film to the "fundamental" role of the jury trial in the American imagination. But I argue that law and film share this narrative substructure because they share a common set of assumptions about narrative plausibility and the social world. In other words, the conventions that govern mainstream American film are also the (largely unspoken) conventions of credibility and verifiability in legal discourse. Knowing it when we see it—as jurors and as moviegoers—means accepting isolated but forensically represented pieces of evidence (a fingerprint, a close-up) to the extent that they combine to offer a plausible representation of lived experience.

In this chapter, I argue that the alternate trial form in American film follows realist rules of evidence but articulates an underlying epistemology that is fundamentally melodramatic. It has done so at least since D. W. Griffith's deeply influential *The Birth of a Nation* (1915). And it continues to do so today. Indeed, American film generates melodramatic trials of our social realities. We have failed to observe this, in part, because of the reality effect of film itself. But, more significantly, this narrative substructure is so familiar it has become invisible to us.

Clover correctly describes her theory as "essentially historical." The adversary trial assumed its modern form in the postbellum period; early cinema borrowed much of its content and most of its personnel (actors, directors, set designers) from late nineteenth-century theater. The extraordinary pressure to come up with stories for the short films that comprised early cinema (D. W. Griffith alone made four hundred) meant that much of nineteenth-century Anglo-American fiction and drama was translated into
cinematic versions. And in the nineteenth century, theater and fiction were dominated by the intertwined impulses of realism and melodrama. Griffith and other early filmmakers combined these familiar representational modes with the novel resources of the camera (in terms of visualization) and film (in terms of editing). Lawyers deployed the same cultural resources as juries increasingly played a fact-finding role at trial. The result is the common form that Clover describes: trials and films are both “fragmented, evidence-examining, forensically visualized, backstory-driven, X-not-X structured, polygraphically photographed, intricately plotted, doubt-cultivating, and jury-directed.”

There is wide consensus that The Birth of a Nation—as the first feature-length motion picture and the first to garner a large national audience—served as the de facto model for mainstream twentieth-century film. An estimated fifty million people saw Birth between 1915 and 1920, and it was rereleased in the 1930s. It is credited with overcoming class divisions in film spectatorship and forging a national film audience that would last for much of the twentieth century. And in film studies, Griffith has long been hailed as the father of cinematic realism, with The Birth of a Nation treated as his masterpiece. This critical tradition describes classical cinema in terms of realism and narrative continuity borrowed from the novel but has done so largely without interrogating the assumptions through which those effects are achieved. Counterreadings of Birth have insisted on the melodramatic elements in Griffith’s work and argued for the ways the film registers the social anxieties of the early 1900s. But even these interventions participate in a tendency to treat realism and melodrama as distinct and even mutually exclusive genres rather than overlapping representational practices. This tendency has obscured not merely their interrelation but also the extent to which melodramatic elements inhere in both cinematic and legal “realism.”

As trial lawyers have long known, we bring the same habits as viewers to our assessment of videotaped testimony or dashboard camera footage as we do to Downtown Abbey or House of Cards.

The Evidence of Realism

Clover invokes Ian Watt’s analogy of the novel-reader to the juror, but Watt does not suggest—as Clover does—that trials conditioned the expectations of eighteenth-century readers. Rather, Watt asserts that the narrative procedures employed by eighteenth-century novelists were general to investigations trained on ascertaining and reporting the truth, including trials. Audiences of both novels and trials, including jurors, expected representations of the truth to conform to certain conventions. And those conven-
tions were the conventions of realism, which rejected established forms (like the epic or pastoral) in favor of representational "fidelity to human experience."22

Eighteenth-century realism gave expression to a broad set of cultural and historical forces: the ascendancy of the individual in political theory, the empiricist turn in philosophy and science, the emergence of a literate middle class.23 The realists' audience took for granted "that truth can be discovered by the individual through his senses" in a social world where individual experience was quickly supplanting the authority of traditional collective and institutional rubrics.24 Fidelity to human experience, therefore, meant telling stories about "particular people in particular circumstances," not "general human types" against a generic background.25 Believable, individuated characters had to be presented "in explicable relation to nature, to each other, to their social class, to their own past."26 Physical environments were presented in exhaustive detail and the material conditions in which characters lived were treated as meaningful contexts for their beliefs and actions. Established literary style was eschewed in favor of the greater authenticity of plain language; novels became episodic, interweaving storylines, often arcing over the span of a lifetime.

In other words, features Clover attributes to the narrative structure of the trial (evidence examining, forensically visualized, intricately plotted, backstory driven, fact-finder-directed) are features of realist narratives generally. Anglo-American juries did not assume the lie-detecting function Clover emphasizes until realist conventions had come to dominate cultural understandings of authentic lived experience and the plausibility of certain narratives. In fact, a variety of rules designed to prevent jurors from having to determine the credibility of witnesses were in place well into the nineteenth century.27 Sworn testimony was presumed to be truthful and competency rules ensured that juries did not hear testimony from "criminal defendants, civil parties, interested persons, felons, spouses, and nonbelievers."28 Juries did not begin to hear the testimony of interested parties in civil suits until the 1840s or the testimony of criminal defendants until the 1860s.29

In practice, juries are probably no better at detecting lies than a coin toss.30 Jurors "tend to rely on worthless clues and misread others. But while the jury does not guarantee accurate lie detecting, it does detect lies in a way that appears accurate, or at least in a way that hides the source of any inaccuracy from the public's gaze."31 The X-not-X structure Clover identifies as the shared narrative substructure of the adversary system and the trial-like film "pits a prosecution X not against a defense Y, but against a defense not-X," "not-X being a site of proliferating scenarios, including mutually exclusive ones."32 This structure does not produce truth, but it does produce judgments that appear accurate according to conventional
Knowing It When We See It

expectations. As Robert Ferguson has observed, the "genre of a story, its familiar form in the telling, is a crucial factor and often the hidden ingredient in courtroom belief." In the Anglo-American trial, this genre is literary realism.

By the 1870s, the realism of the Victorian novel had come under attack from writers influenced by Darwinism and the emerging disciplines of psychology and sociology, on the one hand, and by the social transformations wrought by industrialization and urbanization on the other. With his 1870 call for the "experimental novel," Emile Zola emerged as the standard-bearer of a new generation of social realists. "Now science enters into the domain of us novelists," he writes, "who are to-day the analysts of man, in his individual and social relations. We are continuing, by our observations and experiments, the work of the physiologist, who has continued that of the physicist and chemist. We are making use, in a certain way, of scientific psychology to complete scientific physiology; and to finish the series we have only to bring into our studies of nature and man the decisive tool of the experimental method." The observer," Zola insists, "relates purely and simply the phenomena which he has under his eyes. . . . He should be the photographer of phenomena." The establishment of the jury's modern role as "our sole judges of credibility" in the late nineteenth century occurred precisely as this model of social realism came to dominate the American popular imagination.

As Zola's analogy suggests, late nineteenth-century realism was deeply influenced by the development of photography. Photography dates to the 1830s, but photographs did not become commonplace until after the Civil War, and it was not until the mass production and distribution of photographic images became technically possible in the 1880s that they became ubiquitous. Early cameras required stationary subjects and long exposures. As shutter speeds got faster, this passivity was replaced with a "new way of thinking about the camera," which included the "probing, analyzing, and active observing of scientific work." Eadweard Muybridge's 1878 stop-motion photograph of a galloping horse against a grid background is the classic example. Cameras also got smaller. Hand-held "detective" cameras made it possible to take photographs without a subject's consent and in previously private places.

William Ivins reminds us that the camera sees very differently than the human eye and that the photographic image at first seemed more strange than familiar. But as viewers became "conditioned" to photographic images, they "gradually ceased to talk about photographic distortion [and] the photograph became the norm for the appearance of everything." The camera's way of seeing became the standard for all investigation. The photograph displaced even eyewitness testimony. As Ivins observes, the "19th cen-
tury began by believing that what was reasonable was true and it would end up by believing that what it saw in a photograph was true—from the finish of a horse race to the nebulae in the sky.\textsuperscript{43}

The novelty of the photograph as a representational form is, of course, that it seems to offer an unmediated reproduction—"the scene is there, captured mechanically, not humanly (the mechanical here is a guarantee of objectivity)."\textsuperscript{14} Photographs quickly replaced other forms of written and pictorial representation in the work of representing facts and experience at the end of the nineteenth century, but the "profound difference between creating something and making a statement about the quality and character of something" went largely unnoticed.\textsuperscript{45} Unlike a drawing or a text—which are conspicuously cultural products—in the photographic image, "nature seems spontaneously to produce the scene represented."\textsuperscript{46} Viewers treated photographic images as replicas of the real.

As replicas of the real, photographs promised to extend the empirical knowledge of the individual observer beyond the reach of her personal experience. In Oliver Wendell Holmes Sr.'s much-quoted 1859 formulation, "matter as a visible object is of no great use any longer, except as the mould on which form is shaped. Give us a few negatives of a thing worth seeing, taken from different points of view, and that is all we want of it."\textsuperscript{47} This kind of vicarious expertise resembles the lie-detecting role extended to jurors in the postbellum period. A trial is conspicuously not a reenactment and though juries were once comprised of witnesses, the modern jury has no knowledge of the case except the trial. The juror, like the viewer of a photograph, is presumed to derive knowledge of the facts from their representation.

The list of nineteenth-century photographs claimed and treated as historical fact that were either staged or misrepresented is long: Roger Fenton's famous 1855 pictures from the Crimean War,\textsuperscript{48} Alexander Gardner's 1866 volume of pictures from the Civil War, Jacob Riis's images of poverty in \textit{How the Other Half Lives} (1890), and Edward Curtis's photographs of Native Americans, which he started producing in 1898.\textsuperscript{49} In practice, nineteenth-century photographers often arranged images to conform to viewers' (and photographers') expectations of how the real would look—expectations informed by "the tourist sketch, the painted portrait, the staged tableau, even . . . the scientific illustration."\textsuperscript{50} Photographic realism provides viewers with apparently spontaneous, authentic knowledge of objective reality. But it does so by activating preexisting, conventional understandings of the social world.

The rules of evidence observed by film combine elements of literary and photographic realism.\textsuperscript{51} The omniscient camera replaces the novel's omni-
scient narrator, and the aspiration to use language as denotatively as possible translates into a seamlessness or invisibility of style. The close description of physical settings becomes what we call mise-en-scène in film—the way represented objects create and inform meaning in the filmic frame. The episodic, intercut storylines provide the model for parallel editing. And the emphasis on psychologically individuated characters maps onto the way bodies and faces become “focal points of attention” in the repertoire of filmic shots. The realist novel’s insistence on the treatment of lived experience in time finds expression in the relatively compressed medium of film in both the norm of temporal linearity and the deployment of flashbacks and other forms of intercutting to create the impression of narrative development over time. In film, “the camera seems always to include character subjectivity within a broader and definite objectivity.”

Literary realists themselves quickly encountered difficulties in their attempt to create an authentic report of human experience. One was at the level of language itself: however plain one’s style, words do not correspond perfectly to actual things, correspond to things in various and inconsistent ways, and are never free of connotation. There was also the difficulty of fashioning something interesting out of the banal stuff of everyday life. Early realists solved this problem in part by writing about characters that would interest middle-class readers precisely because their stories had been untellable by previous literary convention: Moll Flanders (1772) is about a poor motherless girl tricked into unmarried sex, Oliver Twist (1838) is about an orphan criminal. And late nineteenth-century social realism was just as vulnerable to charges of sensationalism in its preoccupation with “blood, sex, money, grime, garbage, immigrants, and killing snowstorms.”

But the challenge of authentic reporting for realists cut deeper. As Peter Brooks observes, the literary realists wanted not just to depict everyday life, but to capture the meaning implicit in lived experience. Only “once the fact is ascertained and the phenomenon observed,” Zola insists, does “the experimentalist comes forward to interpret the phenomenon.” But interpret he must. There “is always a moment in [the author’s] descriptions of the world where the eye’s photographic registration of objects yields to the mind’s effort to pierce surfaces, to interrogate appearances.” In some sense, the realist is always looking for the true beneath the mask of the real.

The Epistemology of the Melodramatic Mode

By most accounts, American realists never really attempted the objective description prescribed by Zola. But even among the most committed Continental realists, the “real” and the “ordinary” and “private life” were made
interesting "through heightened dramatic utterance and gesture that [lay] bare the true stakes." And to achieve these effects, realists borrowed from melodrama.

Melodrama enacts its polarization of good and evil through a set of representational practices involving pathos (the evocation of pity through identification), the expression of intense emotion, extraordinary or implausible narrative structure, and sensationalism (violence, thrills, spectacles). Gestures, rhythms, aesthetic patterns, "substitute acts," "parallel situations and metaphoric connections" inform our experience of the narrative in what Thomas Elsaesser describes as "a conscious use of style-as-meaning."

Melodrama emerged as a cultural form in the late eighteenth century and suffused the nineteenth-century popular imagination. In the early melodrama of the French stage, a virtuous innocent is put in "a situation of extreme peril." It appears that the threatening evil—usually a villain—will succeed until the third act, which involves "a highly physical 'acting out' of virtue's liberation from the oppressive efforts of evil." A cartoon version survived well into the twentieth century: a man with a moustache wearing all black ties up an innocent girl in white and leaves her on train tracks. We watch with horror as the train approaches until the (attractive, match-appropriate) hero arrives and saves the girl.

There is broad consensus that melodrama developed in response to an experience of modernity in which "the traditional imperatives of truth and ethics have been violently thrown into question, yet where the promulgation of truth and ethics, their instauration as a way of life, is of immediate, daily, political concern." In melodrama, "good and evil can be named as persons are named," and the conflict of these two forces repolarizes the moral compass of modern subjects. Melodramatic forms provided a new rubric for identifying and anchoring "ethical imperatives" in a social world without transcendent values.

For realists, these forms also "served as the literary equivalent of a particular, historical and socially conditioned mode of experience." Melodramatic scenes and confrontations made renderings of lived experience feel "specific and historically real." Indeed, the melodramatic was so familiar that Dickens himself proffered the argument that the apparent tension between melodrama and realism is largely a matter of perspective. The extremes and discontinuities of melodrama, he admitted, "appear absurd; but they are not so unnatural as they would seem at first sight. The transitions in real life from well-spread boards to death-beds, and from mourning-weeds to holiday garments, are not a whit less startling; only there, we are busy actors, instead of passive lookers-on."

Nineteenth-century melodrama articulated Victorian anxieties about
Knowing It When We See It

sex and class. In the enormously popular and long-running 1898 American stage play *Way Down East*, an innocent girl named Anna is tricked into a fake marriage, impregnated, and abandoned. She gives birth to a child that quickly dies, and finds refuge as a servant for the Bartlett family. But Anna is cast out into a violent snowstorm when Mr. Bartlett learns of her past. (In the famous climax of Griffith’s filmic version, she floats unconscious down an icy river toward a waterfall.) At the last minute, she is rescued by the Bartlett son, who not only loves her but will marry her.

A hundred years later, even true stories are still structured as melodramatic narratives. At the beginning of the 2000 film *Erin Brockovich*, the eponymous heroine is an unemployed, twice-divorced mother of three whose courtroom outburst causes her to lose the personal injury case that is her last hope for financial stability. Hired out of pity by her lawyer, she discovers that a large public utility has contaminated the water supply of a rural community with a carcinogenic chemical. She proves her virtue by working tirelessly and compassionately to help the victims. It looks like the company will succeed in avoiding responsibility and preventing the truth from coming out until the last minute, when a utility company employee—a good man, if a bad employee—in possession of documents that prove the utility knowingly contaminated the water gives those documents to Brockovich. The truth comes out. The victims are awarded $333 million. Brockovich is given $2 million of it as a gift by the benevolent lawyer.

Because melodrama’s emotional stakes arise from the lived experience of (modern) social problems, the form has proved enormously protean. As Linda Williams argues, when popular culture engages with moral questions, it tends to do so in the melodramatic mode. The melodramatic moral binary also “sutures neatly into the courtroom, a place where opposing attorneys tend to emphasize moral clarity over nuance as they argue their cases, casting their side as heroic, the other as villainous.” And a wide variety of legal genres are essentially melodramatic, from victim impact statements and the description of human rights violations to day-in-the-life-of videos (showing the everyday experience of plaintiffs in personal injury cases) to testimony in custody disputes.

There are good reasons for this. At a basic level, melodrama and the common law share a structural similarity: both address larger social phenomena at the level of the individual. And as Alan Dershowitz observes, “human beings must invent, not discover, laws of morality and governance to regulate human conduct so that a narrative of justice can be enforced.” This is precisely the set of conditions melodrama speaks to. But realist representation in the melodramatic mode has certain consequences for the construction of a compelling narrative of justice.
Melodramatic narratives are variously hegemonic, subversive, escapist, political—"categories which are always relative to the given historical and social context," Elsaesser reminds us, in his description of the "radical ambiguity attached to the melodrama." Nevertheless, the fundamental binary between good and evil built into melodrama, together with its expressive orchestration of meaning as much through style as plot, profoundly affect its representations of the social world in which questions of justice are raised. Perhaps most significantly, identification with the victim—and indeed the construction of a victim—is one of "the characteristic features of melodramas in general." This helps account for the particular quality of "emotional involvement" on the part of the audience that characterizes Hollywood film. But it also tends to confute moral power with victimhood.

Home and family are frequently the locus of virtue in melodramatic narratives. In early melodrama, the home was threatened by the malignity of bad men. But institutions, corporations, and governments gradually supplanted individuals as the agents of evil in the melodramatic imagination (in no small part as a result of social realism). The family—and the individualized identity that springs from intimate personal experience frequently connected with the family—was increasingly imagined as isolated from and vulnerable to larger social forces.

Elsaesser draws a connection between this development and the way that most narratives circulating in American popular culture have "resolutely refused to understand social change in other than private contexts and emotional terms." He observes that melodrama "seems capable of reproducing more directly than other genres patterns of domination and exploitation existing in a given society, especially the relation between psychology, morality, and class-consciousness, by emphasizing so clearly an emotional dynamic whose social correlative is a network of external forces directed oppressively inward, and with which the characters themselves unwittingly collude to become their agents." But responsibility for the "evil" suffered by the characters "is firmly placed on a social and existential level, away from the arbitrary and finally obtuse logic of private motives and individualised psychology." The underlying epistemology of the melodramatic mode not only assumes a binary of good and evil at work in the social world but identifies the good with individual and familial experience threatened by larger, variously malignant or merely indifferent, social forces. The representation of this fundamental truth requires the disruption of the status quo reproduced by superficial realism. Indeed, the "dramatic tension in melodrama lies in the possibility that virtue will be masked or
misrecognized through misunderstanding, disguise, or manipulation." So, too, in the trial. Clover’s quip that “where there are lies, there are liars” manifests the melodramatic worldview perfectly: instead of innocent mistakes, inevitable slips of memory, differences of perspective, in the world of the trial there is potential (moral) meaning in every gesture and utterance.

Clover draws our attention to the basic assumption inherent in the fragmented narrative structure of both film and the adversarial trial that an event “can be broken down into particles of fact that preexist narrative and that, scrutinized singly and initially outside of story, these fact particles will, in the mind of the beholder, assemble toward their own best explanation.” As in all melodramatic narratives, this structure invites us to an initial conclusion, unsettles it, invites us to another. The dramatic tension in film works generally by “creating pressure and manipulating it.” Some of this pressure is generated by the plot, but there is also the pressure that “the spectator brings to the film by way of anticipation and a priori expectations of what he hopes to see” and it is particularly this kind of pressure that makes the discontinuities of melodrama “so effective.” At trial, both sides argue “as unfairly as possible,” but in the end, “unfairness gets us fairness, a widening gyre works to narrow things down, lying produces truth, and truth is nothing more than the best story so far.” In other words, style makes meaning in the trial as well. The best story is the one that makes the best use of the expectations the audience brings to the examination of represented facts.

When we watch a film, we know it is not real but have, nevertheless, “a strange feeling of reality.” In 1922, sociologist Walter Lippmann observed that movies were “steadily building up imagery” that would serve as vicarious experience for viewers. Without more trouble than is needed to stay awake the result which your imagination is always aiming at is reeled off on the screen. The shadowy idea becomes vivid; your hazy notion, let us say, of the Klux Klan, thanks to Mr. Griffiths, takes vivid shape when you see the Birth of a Nation. Historically it may be the wrong shape, morally it may be a pernicious shape, but it is a shape, and I doubt whether anyone who has seen the film and does not know more about the Klux Klan than Mr. Griffiths, will ever hear the name again without seeing those white horsemen.” Lippmann further noted that this is a different kind of vicarious experience than that derived from viewing a photograph. As Christian Metz has since explained, the indexical quality of the photograph—its mechanical connection to a particular object in the physical world at a particular moment—fixes certain facts through their representation. In contrast, “film is able to call up our belief for long and
complex dispositions of actions and characters." As a result, the "initially indexical power of the cinema" often operates as "a realist guarantee for the unreal." In film, the camera operates as "an ideal invisible observer, freed from the contingencies of space and time." On the classical account, this omniscience "discreetly" confines itself to "codified patterns for the sake of intelligibility." But omniscience is also achieved through (carefully controlled) discontinuity: film tends to "render narrational omniscience through spatial omnipresence": "cutting within a scene and crosscutting between various locales testify to the narration's omnipresence." Together with the manipulation of mise-en-scène, the narrational omniscience and spatial omnipresence of the camera present a world that "appears to have preexisted" its representation. Where photographic realism offers audiences vicarious knowledge of an object or scene, cinematic realism provides audiences with vicarious knowledge of a social world.

The earliest films screened in the United States in 1895 and 1896 reproduced quotidian activities, and their appeal to viewers was precisely the representation of "the everyday world as they knew it and experienced it directly." It was the indexical quality of the filmed scene, like Muybridge's galloping horses, that appealed to the audience. But very quickly, producers began to offer spectacles filmed from a fixed point of view that replicated the experience of sitting in the audience of a play or pageant, as well as simple stories told in a single scene viewed from a fixed point. The first photoplays were screened in 1902, offering "a series of situations pictorially developed not only to tell a story but so interlaced that this story became cinematically dramatic." These photoplays borrowed heavily from nineteenth-century melodrama not just for stories but "for the stylistic features that allow meanings to be conveyed without words" that were already familiar to a broad popular audience. From the beginning, American narrative film deployed photographic realism in the representation of a melodramatic social world.

D.W. Griffith made his first short film in 1908. Notwithstanding his relentless self-promotion, Griffith was rarely the only, or even the first, to use the many and various cinematic techniques he employed. But more than his contemporaries, "he understood that each new technique was not merely an attention-getting device but a sign, a special way of communicating, a link in a chain of cinematic discourse." He is widely acknowledged as having established the conventions of cinematic realism we take for granted today.

Griffith famously rejected the industry's early insistence on continuity of shot (the studios worried that audiences would be confused by camera movement or discontinuous editing). Instead, he mobilized the photo-
graphic realism made possible by film in the service of the kind of authentic report of lived experience sought by literary realism.\(^1\) Between 1908 and 1913, he moved the camera closer to his subjects, increased the number of shots per reel, “increased the movement and variety of movements within his frame,” and “gave more detailed attention to natural and artificial lighting.”\(^2\) He also “found new ways to increase the tempo and build the tension of his dramatic chase and rescue films”—innovating first parallel editing and then crosscut editing between multiple story lines.\(^3\) He not only varied shot lengths but also shifted from “medium shots to long panorama shots to close-ups” and even to reverse shot shifts in perspective.\(^4\)

By 1913, Griffith was using what Sergei Eisenstein would later give the name montage—the editing together of separate, juxtaposed shots to create an overarching idea or impression or feeling.\(^5\) In film, montage reveals the deeper meaning of the photographic image. Montage also creates the effect of the omnipresence of the camera. Griffith’s camera “seems free to rove anywhere, be everywhere at the same time. Every spot is accessible; every action knowable. All of life can come before the viewer’s eye. Time and space are conquered; sitting in our theater seat, we are the unseen witness of every act, every gesture, every secret.”\(^6\) If movie audiences are always in some sense jurors and movies are trials, they are so because of the vicarious expertise created by codified patterns of montage Griffith helped establish and popularize.

Eisenstein reminds us, however, that this expertise is not rational but emotional. What makes film so powerfully affective is the vividness of emotional experience created through montage, something written language cannot capture.\(^7\) But montage takes a particular view of the social world for granted in order to create this effect.\(^8\) For Eisenstein, “the structure that is reflected in the concept of a Griffith montage is the structure of bourgeois society”—the binary of rich and poor.\(^9\) But that account is too narrow. It is the fundamentally melodramatic structure of binary-ness itself that Griffith introduces and makes invisible in film form.

**The Birth of a Nation as Trial**

The critic Walter Benjamin worried that as “photographs become standard evidence for historical occurrences,” they “acquire a hidden political significance.”\(^10\) During the 1915 promotion of *The Birth of a Nation*, D. W. Griffith predicted that film would become the standard evidence for historical occurrences. “The time will come,” he claimed, “when the children in the public schools will be taught practically everything by moving pictures. Certainly, they will never be obliged to read history again. . . . There
will be no opinions expressed. You will merely be present at the making of history." Griffith repeatedly insisted on the film's historical accuracy. But the form of Griffith's cinematic realism is not that of history, it is the form of the trial.

In my reading, The Birth of a Nation offers an alternate trial of Reconstruction and the Fourteenth and Fifteenth Amendments just as organized resistance to a solidifying Jim Crow regime was taking shape. The NAACP was founded in 1909 "to eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for the children, employment according to their ability and complete equality before law." The NAACP opposed President Wilson's segregation of the federal workforce and initiated litigation challenging a variety of Jim Crow practices, including the disenfranchisement of black voters and the segregation of neighborhoods, and began lobbying for antilynching legislation.

In defense of segregation, The Birth of a Nation rehabilitates Chief Justice Taney's argument in Scott v. Sandford (1857) that persons of African descent were disqualified by their race for the privileges of citizenship and amplifies Taney's anxious invocation of the specter of miscegenation. It puts flesh on the question, raised in Plessy v. Ferguson (1896), whether the Fourteenth Amendment "intended to abolish distinctions based upon color . . . or a commingling of the two races upon terms unsatisfactory to either." And it offers a simultaneously idealized and graphically visualized representation of the "established usages, customs, and traditions of the people" of the (white) South, promoting "their comfort, and the preservation of the public peace and good order," to which the Plessy majority deferred.

Against an account in which the evils of slavery and southern political obstinacy resulted in the Civil War and the extension of the benefits of democracy to freedman (on Clover's account, the prosecution, or X), The Birth of a Nation offers a series of defenses: northern hypocrisy and self-interest led to the war; slavery was not always evil; if slavery was evil, carpetbagger opportunism was worse; Reconstruction made life worse for black and white people alike; black aggression forced white southerners to defend themselves; and finally, white women were not safe with black men (not-X).

The Birth of a Nation tells the fictional story of two families—the northern Stonemans and the southern Camerons—from just before the Civil War through Reconstruction. In the first half of the film, the sons of both families fight in the war while the Camerons at home suffer its effects.
In the second half of the film, Austin Stoneman enacts a policy of racial equality in the occupied South and his black protégé, Silas Lynch, rises to a position of power. Under Lynch’s leadership, Stoneman’s policy proves disastrous, for the South generally (represented by the Camerons) and for white women (including Stoneman’s daughter, Elsie). The oldest Cameron son, Ben, founds the Ku Klux Klan, which eventually reestablishes white control. The clan’s success assures a happy ending: at the end of the film, Ben marries Elsie, and Ben’s sister Margaret marries Elsie’s brother, Phil.

Existing prints of The Birth of a Nation begin with the intertitle, “If in this work we have conveyed to the mind the ravages of war to the end that war may be held in abhorrence, this effort will not have been in vain.” The next intertitle asserts that “the bringing of the African to America planted the first seed of disunion,” and the first image is of manacled slaves in what appears to be a northern town square with a minister praying over them. The third intertitle reads: “The abolitionists of the Nineteenth Century demanding the freeing of the slaves.” It introduces the interior of what appears to be a northern congregation. A black child is walked toward the camera down the center aisle of the church, and a collection is taken while the boy looks steadily at the camera. The hands of a white man rest on his shoulders. In some versions, a woman first reaches toward and then recoils from the boy. With or without that gesture, the sterility of the northern milieu and the deep pathos and isolation of the child are striking.

This scene is immediately followed by an intertitle introducing us to a “great parliamentary leader whom we shall call Austin Stoneman . . . rising to power in the National House of Representatives . . . with his young daughter, Elsie, in her apartments in Washington.” (Stoneman is a proxy for Thaddeus Stephens). Here again there is a sense of isolation and disconnection. Elsie wipes her father’s forehead solicitously then kneels beside him as he stares forward. A wife/mother figure is conspicuously absent. So are Elsie’s brothers, whom we learn will soon be traveling to Piedmont, South Carolina, to visit their friend Ben Cameron.

The scene shifts to Piedmont, “In the Southland” an intertitle tells us, at “the home of the Camerons, where life runs in a quaintly way that is to be no more.” The contrast between living in a “home” and “apartments” is borne out in the following scenes: the two Cameron daughters, Margaret and Flora, walk toward their mother; Margaret kisses her; they greet the passengers in a carriage, which also contains two black children; the children fall out of the wagon and are picked up in a scene that the audience is invited to read as both comic and ordinary from Ben Cameron’s amused reaction. Ben kisses his mother, we are introduced to Dr. Cameron, “the
kindly master of Cameron Hall,” and a household slave called Mammy looks on approvingly. In a scene introduced with the intertitle, “Hostilities,” a kitten and a puppy play.

These scenes emphasize the intimacy and pleasure of the intact family embedded in a larger close-knit interracial community. When Stoneman’s sons arrive, they are immediately accepted into this easy and light-hearted intimacy (there is playful teasing between the boys and some flirting between Margaret and Phil, the oldest Stoneman son). Then the Stonemans are taken on a tour of the Cameron plantation. Shots of slaves picking cotton are followed by a scene in which Ben falls in love with Elsie’s photograph (carried by Phil), followed immediately by shots of slaves dancing during their “two-hour interval given for dinner, out of their working day from six til six.” An older black man offers his chair to Ben; Ben refuses. The Stoneman sons’ tour of the Cameron plantation—and the first reel of the film—ends with Ben Cameron shaking a slave’s hand.36

Here, then, is the opening argument in the alternate trial of Reconstruction and the Reconstruction amendments. Against the Union account, The Birth of a Nation argues that the North, while complicit with slavery, has not understood it, and that racial hierarchy assures social stability and human flourishing. The rest of the film follows the alternating pattern that Clover identifies with the turn-taking structure of the adversarial trial. The conventions of realism establish what will count as evidence, and parallel editing provides the engine driving the interrogation of that evidence. But it is the melodramatic tension between innocent victims and malignant forces that infuses the evidence with meaning.

The “examination of the facts” in The Birth of a Nation begins with the southern threat to secede announced in a newspaper headline. The northern decision to go to war is represented by two scenes of political action: first, Stoneman in heated argument with Charles Sumner (at one point Stoneman pounds his fist on a table), and then, what we are told is “AN HISTORICAL FACSIMILE of the President’s Executive Office on that occasion, after Nicolay and Hay in Lincoln, a History,” in which Lincoln solemnly signs “The First Call for 75,000 Volunteers” and then prays.137 Interpolated between these two scenes are the warm parting of the Stoneman sons from the happy domesticity of the Cameron household (again pictured as including slaves) contrasted with a sequence in which Stoneman’s mixed-race housekeeper refuses to show a visiting Charles Sumner the subservience he expects (she drops his hat on the floor) and it is revealed that Stoneman is romantically involved with her.138

This melodramatic pattern of juxtaposition in which the South stands for family and community and the North stands for abstract politics com-
promised by questionable personal motives is repeated throughout the first half of the film. (Even the musical score alternates between instantly recognizable and regionally identified American folk music with the formal composition of Wagner.) When the Cameron sons go to war, there is a ball, a crowd cheers the departing soldiers, and Ben covers his sleeping younger sister, Flora, with the Confederate flag before he leaves. In contrast, Stoneman himself apparently does not know his sons have enlisted in the Northern cause until Elsie tells him at the beginning of the third reel. An affectionate exchange of letters between Ben and Flora is followed by a raid on Piedmont by “an irregular force of guerillas” in which the Cameron household comes under attack by black and white Union soldiers. Dr. Cameron attempts to repel them with a gun but is overpowered by a white soldier as the women of the household hide in terror. Confederate troops arrive but not before the Union troops have set fire to the Cameron home. Together with Mammy, the Cameron women put out the fire. Mammy hugs one of the Confederate soldiers in gratitude.

Once this pattern is established in the opening reels, the realism of the carefully staged, spectacular battle scenes lends credibility to the melodrama of the Cameron family (and the white South’s) plight. The Union guerilla raid scenes are contrasted with battle scenes in which one of the Cameron sons, Wade, and Stoneman’s younger son, Tod, die together after a brief moment of recognition and mercy. Sherman’s march to Atlanta is depicted in unprecedentedly large scale scenes of military movement punctuated by shots of a displaced and frightened Southern mother and her three children.

The fourth reel begins with the battle for a supply convoy at Petersburg in the “last grey days of the Confederacy.” Gradually we realize that the opposed commanders in the battle are Ben Cameron and Phil Stoneman. The Confederate soldiers are outgunned; the violence of the mortar fire is contrasted with the personal gallantry shown by Ben in helping a fallen Union soldier (the Union soldiers cheer). At the end of the battle, Phil saves Ben’s life. The intertitle “The North victorious” follows shots of mangled dead bodies. The Camerons learn of the death of their second son and an intertitle tells us that loss is “The woman’s part” as Margaret and Flora grieve.

When the film leaves the battlefield, Griffith’s “historical facsimiles,” meticulously reproduced from historical descriptions and photographs, take over the work of anchoring the melodramatic narrative to apparently historical events. After the Petersburg battle, Ben convalesces in the military hospital where Elsie is a nurse. Mrs. Cameron arrives, and she and Elsie quickly form an alliance to thwart “a secret influence that has condemned
Col. Cameron to be hanged as a guerilla.” Elsie gets Mrs. Cameron in to see President Lincoln himself, and Mrs. Cameron persuades him to spare Ben (in the same set used for the “historical facsimile” of Lincoln signing the call for volunteers at the start of the war earlier in the film). This unofficial meeting of Lincoln and the two distraught women is quickly followed by “an historical facsimile” of Lee formally surrendering to Grant, for which the intertitle cites the authority of “Col. Horace Porter in Campaigning with Grant.” Then we see Ben return to the poverty and desolation of postwar Piedmont, where Flora makes a pathetic attempt to ornament her dress for his homecoming with raw cotton.

The imbrication of the characters’ experiences with representations of historical events reaches its apotheosis at the end of the first half of the film. Griffith contrasts Lincoln’s benevolence toward the South (“I shall deal with them as though they had never been away”) with Stoneman’s (“Their leaders must be hanged and their states treated as conquered provinces”). And then Griffith sends us, together with Phil and Elsie, to the Ford theater to witness Lincoln’s assassination in “AN HISTORICAL FACSIMILE of Ford’s theatre on the night, exact in size and detail, with the recorded incidents, after Nicolay and Hay in Lincoln, a History.” The play is depicted on a stage with an audience (including Phil and Elsie) within the film. Scenes from the play alternate with scenes of Lincoln’s arrival, John Wilkes Booth’s arrival, and the assassination itself; culminating in Booth limping to the center of the stage and the intertitle, “Sic semper tyrannis.” This is the kind of disruption that Norman Spaulding describes elsewhere in this volume as of the highest order. The play is disrupted, the film is disrupted, history is disrupted, and Griffith uses the rupture to reset the terms and stakes of the trial.

This first half of The Birth of a Nation offers a defense of a paternalist white South before the war. The second half offers a defense of a white supremacist South that resisted Reconstruction. Griffith elides the difference between the two by deriving the KKK from yet another threat to the Cameron family. But in the second half of the film, the threatening evil is not an uncomprehending and self-interested North. It is a much more familiar melodramatic villain in the person of Silas Lynch. Embodying the extension of equal rights to blacks in the mixed-race Lynch and then setting in motion what is superficially a conventional plot in which the evil black-clad man imperils a white-clad innocent allows Griffith to cloak a hyperbolic and ahistorical representation of African Americans in precisely the kind of narrative structure that felt realistic to audiences steeped in a melodramatic account of the social world.

The second half of the film begins with an intertitle making the re-
Knowing It When We See It / 57

...markable assertion, “This is an historical presentation of the Civil War and Reconstruction period, and is not meant to reflect on any race or people today.” The next three intertitles claim first that “the Policy of the congresional leaders wrought a veritable overthrow of civilization in the South ... in their determination to ‘put the white South under the heel of the black South’” and then that “the white men were roused by a mere instinct of self-preservation” to form the Ku Klux Klan. The authority Griffith offers for these intertitles is no less than sitting president Woodrow Wilson’s 1902 *History of the American People*.

After these intertitles, a newspaper headline—this time reporting the assassination of the South’s “best friend” in Lincoln—once again announces the coming of a war. And the second half of the film follows the same formal pattern of alternation between the personal experiences of Phil, Elsie, and the Camerons on the one hand, and apparently historical representations of general social phenomena on the other, as the first half of the film. The courtships of Phil and Margaret and Ben and Elsie play out as life in the South is transformed by Stoneman’s “edict that the blacks shall be raised to full equality with the whites.”

But in the second half of the film, the imprimatur of historical accuracy is affixed to much more dubious representations than in the first. There are scenes in which carpetbaggers induce freedmen to stop working; Freedman’s Bureau supplies are “misused to delude the ignorant”; blacks participate in voter fraud and forcibly prevent whites from voting; an all-black jury presided over by a black judge acquits a black defendant to the horror of the white family that had apparently been his victim. Only one of these scenes offers documentation of its veracity. An intertitle reads: “The negro party in control in the State House of Representatives, 101 blacks against 23 whites, session of 1871. AN HISTORICAL FACSIMILE of the State House of Representatives of South Carolina as it was in 1870. After photograph by The Columbia State.” A series of shots follow in which black House members dress inappropriately, remove their shoes, drink alcohol, eat, and pass two bills: one requiring whites to salute black officers in the street and one “providing for the inter-marriage of blacks and whites.” It is not clear which, if any, of these acts the photograph published in the *Columbia State* depicted. Rather, the invocation of the newspaper lends the racial animus of the shots vicarious credibility.

Such “historical” scenes alternate with scenes of Ben and Elsie’s courtship as the Cameron household suffers under Stoneman and Lynch’s regime (including the beating of the Camerons’ still-loyal black house servant Jake for voting against the “Carpetbaggers.”) This pattern culminates with the legislative endorsement of interracial marriage, followed immedi-
ately by an intertitle warning: "The grim reaping begins." A black soldier named Gus shows too much interest in Flora, an insolence that provokes Ben to form the KKK (the Klans costumes are inspired by an incident in which two white children frighten four black children by hiding under a sheet). But Ben is too late to save Flora.

In this notorious sequence, we first see Gus watching an unwitting Flora. Here, the natural mise-en-scène fosters the impression of reality: Flora throws a rock, draws water from a spring, sits on a log, and talks to a squirrel on a branch as it rubs its nose. Gus reveals himself and proposes to Flora. She refuses and tries to get away, but Gus pursues her into the woods. Ben finds the bucket Flora has left behind and begins his own pursuit. The following parallel-edited shots of the three characters moving separately through the woods culminate in Flora jumping from a cliff to her death. An intertitle reads: "For her who had learned the stern lesson of honor we should not grieve that she found sweeter the opal gates of death." Gus is then pursued into a gin mill, where there is an elaborately choreographed fight before Ben finally catches Gus. An intertitle reading "The trial" introduces a montage of Gus dragged before hooded Klansmen, Flora dead in the Cameron living room, an unmasked Ben pointing at Gus, and the intertitle "Guilty."

Gus's lifeless body is delivered to Lynch, who initiates an offensive against the Klan, and the Cameron home is once again invaded, this time to arrest Dr. Cameron. Phil Stoneman helps the Camerons' household slaves rescue Dr. Cameron, Phil kills a black man in the process, and he and the Camerons flee, ending up in the (oddly) homey cabin of two Union veterans and a little girl. Elsie goes to Lynch for help but quickly finds herself captive in his apartments. Lynch proposes to her. When she refuses, he first threatens to horsewhip her, then attempts to persuade her with the prospect of being a queen in his "Black Empire." In the film's most overt threat of rape, an intertitle reads, "Lynch, drunk with wine and power, orders his henchmen to hurry preparations for a forced marriage." Stoneman, who has endorsed the idea of Lynch marrying a white woman, reacts with outrage when he learns that Lynch wants to marry Elsie. Outside, the streets are depicted as a riot of black on white violence at Lynch's behest.

Two rides to the rescue ensue, in parallel editing. Klan spies hear Elsie screaming and bring the news to Ben; more Klansmen ride to the aid of Phil, the Camerons, and their slaves Mammy and Jake. A shoot-out at the Union veterans' cabin repels Lynch's men; Ben saves Elsie in the nick of time. The Klan restores order in the streets.

The much-celebrated realism of the Civil War battle scenes in the first half of the film confers apparent historical authenticity on the also much-
celebrated realism of these (fictional) Klan rides. The intensity of the shoot-out at the cabin, together with the intensity of the threat of rape, effectively conflate the social and political conflict between black equality and white privilege represented in the former with the formulaic melodrama of an innocent, white-clad Elsie helpless in the black hands of the villainous Lynch. In other words, the parallel climaxes complete the transfer of the source of evil from northern policy to newly freed blacks themselves and of virtue from innocent girls to whites no longer sectionally divided.

The closing arguments present a new binary of violence and reconciliation. On the one hand, there is a show of force. An intertitle reads: "Parade of the Clansman." In the scenes that follow, Elsie, Ben, and Margaret return to Piedmont at the front of a column of Klan members. Blacks run in fear as whites, conspicuously women and children, cheer the Klansmen. The following intertitle reads, "The next election." Klansmen with guns deter blacks from voting. On the other hand, there is the apparently happy ending. The penultimate intertitle reads: "The aftermath. At the sea's edge, the double honeymoon." The two couples, Phil and Margaret and Ben and Elsie, look out at a sunset. In both couples, North and South are reconciled, but on the condition of reestablished white supremacy.

The handful of breaks in the photographic realism of The Birth of a Nation both reinforce the realism of the remainder and serve melodramatic ends. The most striking break is the use of white actors in blackface to portray the principal black characters. The blackface draws attention to the otherness of Gus in relation to Flora (Griffith also has Gus foaming at the mouth while he follows her), heightens the comedic familiarity of Jake and Mammy, and exaggerates the unnaturalness of Lynch and Lydia, the film's two mixed-race villains.

With these exceptions, The Birth of a Nation establishes the vocabulary of cinematic realism: the isolated close-up tells us this is an important piece of evidence; a panorama gives us perspective on the larger social forces at work; cross-cutting shows us how to interpret the relative significance of pieces of the story; parallel editing reveals the stakes of the action; montage allows us to aggregate the evidence of isolated images. And the underlying epistemology of montage thinking in Birth locates virtue and justice in a personal morality at odds with broader social and political forces. Through its alternate trial of Reconstruction, the film reveals the failure of official law to achieve justice.

It is no coincidence that this most impactful deployment of the new cinematic realism worked in the service of a virulently racist, ideological argument. As Linda Williams argues, race has preoccupied American melodrama at least since Uncle Tom's Cabin (1852). Race also played a sig-
significant role in the extension of lie-detecting responsibilities to American juries during Reconstruction. After Tennessee ratified the Thirteenth Amendment, "most of the South abandoned any hope of retaining slavery." But while "the most radical of Northern voices called for giving newly freed slaves the vote, support for universal suffrage even in the North fell far short of a critical mass. Between these two issues lay the question of granting freedmen the right to testify in state courts of the South." George Fisher reminds us that, "for a season," the question of African American competency "ranked among the most hotly contested political issues in the nation." Ultimately, northern insistence that black people should be allowed to testify in legal proceedings resulted in the liberalization of competency laws generally.

The postbellum convergence of questions of legal legitimacy and racialized melodrama manifests itself strikingly in the phenomenon of spectacle lynching. *The Birth of a Nation* fits squarely in a tradition of spectacle lynching that developed along with mass culture in the late nineteenth century. The two trials represented in the film—the all-black trial that ends in what is portrayed as an unjust acquittal and the Klan "trial" that ends in Gus's execution—articulate the pattern repeated in American film. Official law is bureaucratic and corruptible, moral law is personal and private and, as a result, justice requires extralegal intervention. Indeed, filmic alternate trials—in which realistic but also inherently melodramatic personal experience, rather than legal procedure and evidentiary standards, determines guilt or innocence—have more in common with spectacle lynchings than their often liberal, social-justice oriented plots would suggest (or countenance).

"The Truth Came Out"

Elsewhere in this volume, Katie Model and Jennifer Petersen explore the complicated relationship between documentaries and historical trials. Documentaries are distinct from narrative films in important ways, but American documentaries—and particularly those that are seen by relatively large audiences—frequently employ realist rules of evidence in a montage style, offering melodramatic narratives in which the truth emerges from the viewer's ability to know it when she sees it.

At the end of *The Central Park Five*, Antron McCray's recorded voice tells us, "the truth came out." The truth to which he refers—his innocence, along with that of Kevin Richardson, Kharey Wise, Yusef Salaam, and Raymond Santana in the 1989 beating and rape of Trisha Meili in Central Park—had, in fact, been out for eleven years when the film was released. The convictions of McCray and the others were vacated in 2002 after the
confession and DNA match of serial rapist Matias Reyes. The truth at stake in the alternate trial presented by *The Central Park Five* is something different. That truth, *New York Times* reporter Jim Dwyer tells us in the film, "is almost unbearable." And it is not just that the future crimes of Matias Reyes might have been prevented if he had been correctly identified as Trisha Meili's attacker. As historian Craig Steven Wilder tells us, the truth is that "we are not very good people, and we often are not."

For all of its inversion of racial stereotypes—young black and Latino men are the innocent victims of a white legal system and white press apparently indifferent to justice—*The Central Park Five* and *The Birth of a Nation* are remarkably similar in form. An integrated, family-based community is threatened by a bureaucratic and self-serving power structure that is not only corrupt but fundamentally misunderstands the community it is destroying in the name of principles it does not really serve. Like *The Birth of a Nation*, *The Central Park Five* begins with an invocation of the ravages of war, this time a "proxy war" Jim Dwyer tells us was being fought in New York City in the late 1980s. Against an implied official narrative in which young black and Latino men were responsible for the climate of violence and crime in New York City (the X version), *The Central Park Five* offers a series of defenses: white racism and economic inequality created the conditions in which violence and crime arose; the press acted as a lynch mob; black and Latino families were victims; and finally, young men of color are not safe with white cops or female prosecutors (not-X).

The film opens with text superimposed over scenes of what we infer to be Central Park at night: the crime is briefly described, the wrongly convicted men are named, we learn that New York police and prosecutors "chose not to comment at all." Then we hear Matias Reyes's recorded voice not merely confess to the murder but guarantee that the "kids" convicted of the crime are innocent. Certain words spoken by his disembodied voice are highlighted as text on the screen. The first distinct visual image is video footage from the crime scene the day after the crime, in which a police detective describes the discovery and condition of the unclothed and severely beaten victim. For a few seconds, we see the two white women we will later learn were prosecutors at the scene. Then Jim Dwyer tells us people did not do their jobs—not reporters, not the police, not the prosecutors, not the defense lawyers. We watch a montage of rapidly juxtaposed shots of newspaper and tabloid headlines, television news reporting and interviews (including brief comments from Mayor Ed Koch and Gov. Mario Cuomo) emphasizing the racial animus in the city at the time of the crime. The background music is rap. Then, in an abrupt shift, we meet the five exonerated men as they describe their childhoods in interviews with the filmmak-
ers, intercut with family photographs and footage of (other) black children playing in what we assume to be Harlem.

Here is the opening argument in the film's alternate trial of race in American law and culture. A psychopath on a spree committed a brutal crime, but instead of solving that crime, the system put five black and Latino boys from the projects, who happened to have been in Central Park the night of the crime, on trial for making white New Yorkers feel unsafe. Or, in Jim Dwyer's words, "the truth and reality and justice were not part of it." The film's closing argument is that the 2002 exoneration did not right the wrong. Not only were five men's lives irreparably altered (Yusef Salaam reminds us that the time they served in prison was not vacated with their sentences, and Kharey Wise asserts that "no money could buy that time back"), but police and prosecutors refused to admit any wrongdoing. In Professor Wilder's words, the Five's "innocence never got the attention that their guilt did." They were scapegoats in 1989, and they continue to be victims in the proxy war being fought today.

The rest of the film follows a familiar pattern of alternation, in montage editing, between a legal system that is self-interested (a white woman prosecutor makes her reputation, police gather at a bar to celebrate a "home run") and compromised—if not corrupted—by social and political pressure, and the plight of the five boys and their families helplessly caught up in that system. Mayor Ed Koch's assertion that it was the "crime of the century" because Central Park is "holy" to (white) New Yorkers is immediately contrasted with Kevin Richardson's sister's description of the families at the precinct trying to find out what had happened to their sons; courtroom drawings of the trials are followed by footage of Kevin Richardson's mother being taken to the hospital after passing out when the verdicts are read; news coverage of a prosecutor's refusal to accept the exonerations is juxtaposed with Raymond Santana's father saying that the day in 2002 that his son was released from prison was the best day of his life.

It is striking that The Central Park Five uses filmed interviews to discredit videotaped interviews without irony. But there is no irony because for all its documentary realism, The Central Park Five follows the same melodramatic formula as The Birth of a Nation. The film tells us that we cannot believe the boys' confessions because of the conditions under which they were made (and explains that jurors found them credible because it was incredible such a confession would be made if it were not true). But if the believability of testimony turns on the (invisible) context in which it was filmed, we should suspect all of the interviews in the film, including the opening confession of Matias Reyes. The Central Park Five circumvents this problem by presenting its testimony in a melodramatic binary: the
videotaped confessions are untrue because they were coerced by unscrupulous police detectives indifferent to actual guilt or innocence; the testimonial interviews with the five as adults—even though we are provided with no context for the interviews themselves, nor told about the pending civil suit that might motivate or inform their testimony until the end of the film—are truthful because they are innocent.

The representation of the way the coerced confessions themselves are obtained follows the form of Gus’s pursuit of Flora in The Birth of a Nation. Initially, the investigators are solicitous—they say they just want information. But it quickly becomes clear that they will not take no for an answer. The boys’ families realize the danger late and do not get to them in time. The investigators pursue the boys to the edge of the cliff, and the boys go over it. Angela Black describes her brother Kevin Richardson’s condition when she finally sees him after twelve hours in police custody. "I walked in the room, and I could see that he was terrified. I could see him, like, shivering. I said, ‘Kevin, I can’t believe you saw this woman get raped.’ And he looked at me. He said, ‘Angie, I didn’t see a rape.’" At this point it takes her almost ten seconds to fight back her emotions, then she continues: "And I said, ‘Kevin, why did you say that then?’ He said, ‘Cause they told me to say it so I could go home.’” The film immediately cuts away from her face to footage of at least nine white police officers and detectives standing around a car. A hunched figure with a black jacket completely shrouding his head and shoulders is led out of what we assume to be the precinct by five more white police detectives and put into the back seat of a car. While we watch this, Angela Black’s voice continues: “But it was like a orchestra, like they orchestrated this whole thing, and I felt so dumb for not realizing it ‘til it was too late.” Then we see Raymond Santana Sr. in an interview saying, “When I came back, they disappeared my son. He wasn’t there no more. I said, ‘Where’s my son?’ They say, ‘They took him to another police station.’” Raymond Santana Jr. picks up the narration here: “My father did make a return, um, but when he came it was too late.”

The alternate trial presented in The Central Park Five is conspicuously one-sided. As in The Birth of a Nation, self-interested politicians (Koch, Stoneman) and their corrupt henchmen (police officers and prosecutors, Lynch) sacrifice innocent children and destroy tight familial communities. Indeed, filmic alternate trials tend to treat the X, or prosecution side of the case, as already known to the audience—its arguments are implied but only articulated as necessary to the not-X version that is the ground of the film. But even films that are apparently more evenhanded often enact a binary between moral justice and an evil working under the cover of the system. Unlike the corporate defense attorney James Mason in The Verdict
(1982)—who is described (appreciatively) by a plaintiff's side lawyer as "the prince of darkness"—the corporate defense attorney played by Robert Duvall in *A Civil Action* (1998) is intelligent and appealing as he makes the case that the cause of a cancer cluster cannot be known. Yet by the end of the film, his client is shown backlit by the river he has knowingly polluted blazing with fire. The film trial need not be impartial to be fair because we will know the truth when we see it.

Like *The Birth of a Nation* and many films between them, *The Central Park Five* relies on the news media to establish apparently accurate and representative historical context. The fact that it does so, even as it lays partial blame for the wrongful convictions on the media, testifies to the entrenched authority of published photographs and text in the realist rules of evidence. And like *Birth*, *The Central Park Five* relies heavily on the authority of experts—particularly historians and (certain, ethical) journalists—to vouch for the reality of the social world depicted by the film.

But that social world is conceived melodramatically. The victims are vulnerable children. The villains are evil to the end. With the exception of a social psychologist suggesting the likely effect of the pressures on police and prosecutors, the complexities of the case itself, and race and class politics in New York generally, are largely suppressed in favor of a racial binary repeatedly reinforced by visual imagery. The film clearly intends to offer a reformist critique of the legal system. But the melodramatic formula establishes a standard of justice no institution could meet, precisely because it is established on personal, moral terms. And by reproducing this reductive structure, the film risks reinscribing the very racial binary it means to discredit.

Conclusion

Clover asserts that as jurors or moviegoers, Americans are "first last and always triers of fact." And she emphasizes the fact that the Anglo-American legal trial posits an "exceptionally attentive" viewer, herself "a party in the meaning-making process." But as Walter Benjamin observes, "in the movies, this position requires no attention. The public is an examiner, but an absent-minded one." Our long experience as consumers of films and TV shows that follow the conventions of realism in the service of melodramatically structured narratives has taught us to think that we can know the truth when we see it. And there is no difference between the way we view video of actual events and the way we view filmic alternate trails. Both activate our personal assessments of plausibility and authenticity (realist rules of evidence) informed by our conventional understandings of the
Knowing It When We See It / 65

social world. The fact that we continue to view digital images as replicas of the real reveals how completely the conventional passes for the indexical in our visual culture. \(^{187}\)

In 2007, the Supreme Court determined that a police officer’s use of deadly force to stop a high-speed car chase was reasonable under the Fourth Amendment based solely on video recorded by a dashboard-mounted camera. The decision preempted a trial. \(^{188}\) As many commentators have since noted, the Court failed to realize that they were in fact parties in the meaning-making process when they viewed the video and not passive spectators. \(^{189}\) Indeed, it has been argued that Scott v. Harris may well have been decided differently if the Supreme Court had “watched a different video of the exact same events taken from inside the suspect’s car.” \(^{190}\) Nevertheless, the Court again relied exclusively on dashboard camera footage to grant summary judgement in favor of a police officer accused of using excessive force in Plumhoff v. Rickard (2012). In Plumhoff, the Court viewed footage of a vehicle pursuit involving six police cars captured by three different cameras and determined that the fifteen shots fired into the vehicle after it had come to a stop were reasonable under the circumstances. No trial was necessary because the video portrayed those circumstances “conclusively.” \(^{191}\)

Justice Alito’s description of the point at which the pursuit turns lethal in Plumhoff is remarkably cinematic. He constructs a single account from multiple cameras through what can only be called montage editing. It begins with an overhead long shot: Rickard “exited I-40 in Memphis, and shortly afterward he made ‘a quick right turn,’ causing ‘contact [to] occur’ between his car and Evans’ cruiser.” Cut to medium shot of the cars: “As a result of that contact, Rickard’s car spun out into a parking lot and collided with Plumhoff’s cruiser.” Cut to the interior of Rickard’s car: “Now in danger of being cornered, Rickard put his car into reverse in an attempt to escape.” Cut to wide shot of parking lot: “As he did so, Evans and Plumhoff got out of their cruisers and approached Rickard’s car, and Evans, gun in hand, pounded on the passenger-side window.” Cut to close-up of the back of Rickard’s car in reverse: “At that point, Rickard’s car ‘made contact with’ yet another police cruiser.” Cut to side shot of Rickard’s car: “Rickard’s tires started spinning, and his car ‘was rocking back and forth,’ indicating that Rickard was using the accelerator even though his bumper was flush against a police cruiser.” Cut to shot of the car from Plumhoff’s point of view: “At that point, Plumhoff fired three shots into Rickard’s car.” Cut to view from interior of Rickard’s car: “Rickard then ‘reversed in a 180-degree arc’ and ‘maneuvered onto’ another street, forcing Ellis to ‘step to his right to avoid the vehicle.’” Cut to shot of the car from Ellis’s point of view: “As Rickard continued ‘fleeing down’ that street, Gardner and Galtelli fired 12
shots toward Rickard's car, bringing the total number of shots fired during this incident to 15." Cut to overhead shot of the street: "Rickard then lost control of the car and crashed into a building." Cut to medium shot of the now stationary car: "Rickard and Allen both died from some combination of gunshot wounds and injuries suffered in the crash that ended the chase." 

The spectacle of the chase has long been a staple of American film. What Justice Alito describes as "outrageously reckless driving" is as much a matter of convention as of fact. The more realistic the action, the more exciting it is. But the chase is exciting because it generates uncertainty—will the bad guy be stopped in time?—in a fundamentally melodramatic narrative situation where there is a threatening peril and someone innocent (or at least virtuous) in danger. Justice Alito asserts that "under the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that Rickard was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road." But if we can determine the interior states of its participants when we watch a car chase, it is only because we bring assumptions about the moral stakes of that chase with us to the viewing.

Television and online forms of entertainment have substantially eroded film's dominance of American popular culture. But realist representation in the melodramatic mode is still the norm, from reality shows to the extraordinarily popular podcast Serial—itself an alternate trial. In her discussion of the racialized melodrama of the O. J. Simpson trial, Linda Williams invokes Jeffrey Rosen's sense that "the Simpson trial took place in a world that had transcended facts." But all trials take place in a world where representation transcends fact. And visual representation is increasingly frequent in a variety of legal settings. As legal scholars and law schools address the need for training in visual literacy for lawyers, we will have to contend with the melodramatic underpinning of our polygraphic viewing.

Notes

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2. Ibid., 103.
3. Ibid.
4. Ibid., 102.
6. The success of both is dramatic. The Thin Blue Line prompted the exoneratior of Randall Adams in the murder of a Texas police officer and identified the likely killer; The Central Park Five put pressure on the city of New York, eventually leading to a $41 million settlement with five men wrongly convicted in 1990, whose convictions were vacated in 2002.
11. In legal discourse, the expression “I know it when I see it” evokes Justice Potter Stewart’s 1964 description of hard-core pornography in Jacobellis v. Ohio, 378 U.S. 184 at 197. I mean something more general here, but the kind of melodramatic vision I use the expression to describe is not far from Justice Stewart’s meaning.
12. When we watch a film, we know it is not real but have, nevertheless, “a strange feeling of reality”—this is “a classical theme of film theory.” Christian Metz, “Photography and Fetish,” in The Photography Reader, ed. Liz Wells (London: Routledge, 2003) 144.
14. See A. Nicholas Vardac, Stage to Screen: Theatrical Origins of Early Film: David Garrick to D. W. Griffith (Cambridge, MA: Harvard University Press, 1949); Thomas Postlewait, “The Hieroglyphic Stage: American Theatre and So-


18. See for example David Cook, *A History of Narrative Film* (New York: Norton, 1981), 59. These accounts do not so much deny the melodramatic elements of Griffith's work as assert that they do not matter or are transcended.


20. Film studies has tended to treat melodrama as a genre and the melodramatic mode generally as an exception to classical cinema (see David Bordwell, Janet Staiger, and Kristin Thompson, *The Classical Hollywood Cinema* (New York: Columbia University Press, 1985). I am following Linda Williams, Christine Gledhill, and others who have recently argued persuasively against treating melodrama as marginal and excessive, finding instead that melodrama permeates even the most apparently realist films. See, for example, Williams, *Playing the Race Card*, 16; Rick Altman, "Dickens, Griffith, and Film Theory Today," in *Silent Film*, ed. Richard Abel (New Brunswick, NJ: Rutgers University Press, 1996), 145; Christine Gledhill, "The Melodramatic Field: An Investigation" in *Home Is Where the Heart Is: Studies in Melodrama and the Woman's Film* (London: British Film Institute, 1987).


22. Ibid., 13. The result has been a diversity of implementation rendering realism itself notoriously difficult to define. For Watt, realism is "the sum of literary techniques whereby the novel's imitation of human life follows the proce-
dures adopted by philosophical realism in its attempt to ascertain and report the truth" (31). Literary realism can be loosely identified by three criteria: verisimilitude in its documentation of the observed details of the everyday world; attention to normal or representative, rather than exceptional, experience not just in choice of characters and setting but also in plot; and a dispassionate, even scientific (as opposed to subjective or idealistic) treatment of that material. George Becker, *Documents of Modern Literary Realism* (Princeton: Princeton University Press, 1963), 3–38, cited in Donald Pizer, *Realism and Naturalism in Nineteenth-Century American Literature* (Carbondale: Southern Illinois University Press, 1984), 1–2.

Literary criticism juggles two temporal categorizations of realism: one encompasses the novels of the eighteenth and nineteenth centuries generally, the other applies more narrowly to "social realism" starting in the 1870s. Ian Watt's account of "formal realism" describes the former. Pizer and Becker discuss the latter.

23. In *Rise of the Novel*, Watt locates the origins of modern realism in Locke and Descartes and begins to find the theoretical formulation of the concept in the mid-eighteenth century (12). For Watt, realism reflects "that vast transformation of Western civilization since the Renaissance which has replaced the unified world picture of the Middle Ages with another very different one—one which presents us, essentially, with a developing but unplanned aggregate of particular individuals having particular experiences at particular times and at particular places" (31).

24. Ibid., 12, 14.


27. George Fisher, "The Jury's Rise as Lie Detector," *Yale Law Journal* 107 (January 1997): 575, 638, 655. Juries began to play a truth-evaluating role in the late seventeenth-century and had fully assumed the lie-detector function by the 1880s. But Fisher argues that the legal system did not "invest the jury with this new lie-detecting role because of a conviction that the jury had grown equal to the task" but rather because the gradual erosion of competency rules and the special pressure created by the argument against African American exclusion (697). Fisher concludes that the "inexorable flow of fact finding power to the jury was due, finally, to the jury's capacity to erase all blemishes"—the system's need for legitimacy. "Because it emits no light, the black box of the jury room has become the system's black hole, drawing into itself all of the questions of fact for which the system needs an unquestionable answer" (705).

28. Ibid., 67.

29. Ibid., 658–59.

30. "But most of the evidence we have suggests that juries have no particular talent for spotting lies. Not only do experimental subjects rarely perform much
better than chance at distinguishing truth from falsehood, but they think they are better lie detectors than they are," ibid., 707, citations omitted.
31. Ibid., 578-79.
33. Ferguson continues, "Notably, lawyers have masked the real importance of generic considerations through their appeals to the common sense of a situation. But common sense . . . is basically a culturally constructed use of experience to claim self-evidence; it is neither more nor less than 'an authoritative story' made out of the familiar." Ferguson, "Untold Stories in the Law," 87.
34. However, as Watt reminds us, "there is no reason why the report on human life which is presented by [formal realism] should be in fact any truer than those presented through the very different conventions of other literary genres." Watt, Rise of the Novel, 32.
36. Ibid., 7 (quoting Claude Bernard).
40. See generally Eadweard Muybridge, Animals in Motion (London: Chapman and Hall, 1899).
42. "It was not long before men began to think photographically, and thus to see for themselves things that it had previously taken the photograph to reveal to their astonished and protesting eyes." Ivins, Prints and Visual Communication, 138. "The photograph has been accepted as showing that impossible desideratum of the historian . . . how it actually was" (94).
43. Ibid., 94.
44. Roland Barthes, "Rhetoric of the Image," in Image Music Text, trans. Stephen Heath (New York: Hill and Wang, 1977), 44. Christian Metz describes this as the indexical quality of photography. The relationship between the representation and the thing represented is distinguished "by an actual contiguity or connection in the world." Metz, "Photography and Fetish," 139. Photographs "are prints of real objects, prints left on a special surface by a combination of light and chemical action" (139). But it is merely the "mode of production itself, the principle of the taking" that is indexical in the photographic image (139).
46. Barthes, "Rhetoric of the Image," 46. "This is without doubt an import-
tant historical paradox: the more technology develops the diffusion of information (and notably of images), the more it provides the means of masking the constructed meaning under the appearance of the given meaning” (46).


49. Orvell, Real Thing, 95–99.

50. Ibid., 94. See generally 77–85.


54. Bordwell, “Classical Hollywood Cinema,” 26. As in the realist novel, classical cinema’s subjects are “psychologically defined individuals” “endowed with an evident, consistent batch of traits, qualities, and behaviors” (20).

55. Ibid., 25.


57. The very forces that fostered realism—individualism, empiricism, the emergence of the middle class—created the necessity of a “new moral and aesthetic category, that of the ‘interesting.’” Peter Brooks, The Melodramatic Imagination: Balzac, Henry James, Melodrama, and the Mode of Excess (New Haven, CT: Yale University Press, 1976), 13.


59. Orvell, Real Thing, 240.

60. Brooks, Melodramatic Imagination (1976), 1.


63. Donald Pizer has argued that writers like Twain, Howells, and James
“dramatize a vision of experience in which individuals achieve that which is still a goal for mankind at large”—they are, for him, “ethically idealistic.” Pizer, Realism and Naturalism. Leslie Fiedler has given a slightly different account of the persistence of Romantic idealism among American realists. Fiedler insists that “the sentimental novel and America did not come into existence at the same time by accident” (xviii). “America is not exclusively the product of Reason... Behind its neoclassical façade, ours is a nation sustained by a sentimental and Romantic dream” (xxiii). Leslie Fiedler, Love and Death in the American Novel (New York: Meridian Books, 1960).

64. Brooks, Melodramatic Imagination (1976), 14.

65. The term melodrama is sometimes used narrowly to identify specific genres (especially in eighteenth- and nineteenth-century theater). But I am using the term broadly, as many have, to describe a set of representational structures that are not limited to specific narrative and theatrical practices. Linda Williams makes a persuasive argument for this approach in the first chapter of Playing the Race Card.

66. This is Ben Singer’s “cluster concept” definition of melodrama. See Ben Singer, Melodrama and Modernity (New York: Columbia University Press, 2001), 44–49. But it is also consistent with Brooks’s list of the connotations of melodrama: “Indulgence in strong emotionalism; moral polarization and schematization; extreme states of being, situations, actions; overt villainy, persecution of the good, and final reward of virtue; inflated and extravagant expression; dark plottings, suspense, breathtaking peripety,” and “identification with ‘monopathic’ emotion.” Brooks, Melodramatic Imagination (1976), 12.


68. Brooks, Melodramatic Imagination (1976), 31

69. Ibid., 32.

70. Brooks, Melodramatic Imagination (1976), 14. The cause of this crisis varies by account: for Peter Brooks, it is the “final liquidation of the traditional Sacred and its representative institutions”; for Thomas Elsaesser, the French Revolution; for those in the Marxist tradition, the split between routinized work and personal identity, which is relegated to home and the family, under capitalism. Brooks, Melodramatic Imagination (1976), 15; Elsaesser, “Tales of Sound and Fury,” 168; Chuck Kleinhans, “Notes on Melodrama and the Family under Capitalism,” in Imitations of Life, ed. Marcia Landy (Detroit, MI: Wayne State University Press, 1991), 197–204.


72. Ibid., 17.

73. Elsaesser, “Tales of Sound and Fury,” 171. “Even if the situations and sentiments defied all categories of verisimilitude and were totally unlike anything in
Knowing It When We See It

real life, Elsaesser explains, "the structure had a truth and a life of its own, which an artist could make part of his material." (71)

74. Ibid., 172.
75. Dickens, quoted by Eisenstein in "Dickens, Griffith," 224.
76. Steven Soderbergh, dir., Erin Brockovich (2000; Universal Pictures Home Entertainment, 2000), DVD.
78. On this account, melodrama today operates as "the larger cultural mode driving the articulation of specific genres," and realism itself often articulates fundamentally melodramatic themes. Williams, Playing the Race Card, 17, 38.
82. Linda Williams insists that it is melodrama through which "American democratic culture has most powerfully articulated the moral structure of feeling animating its goals of justice." Williams, Playing the Race Card, 26.
84. Ibid., 185.
85. Ibid., 176.
86. "In this there is obviously a healthy distrust of intellectualisation and abstract social theory—insisting that other structures of experience (those of suffering for instance) are more in keeping with reality. But it has also meant ignorance of the properly social and political dimensions of these changes and their causality, and consequently it has encouraged increasingly escapist forms of mass entertainment" (ibid., 170).
87. Ibid., 185. It is this aspect of melodrama that may help account for the alignment of melodrama and bourgeois ideology identified by Eisenstein.
88. Ibid., 185.
89. Umphrey, "Dialogics of Legal Meaning," 413.
90. See Clover, "Law and Order," 104.
91. Ibid., 106.
92. Ibid., 103. It must be observed that Clover's description of the trial-like substructure of most American film is at odds with the long tradition of film criticism in which invisibly crafted linear narrative driven by character-motivated causality is the hallmark of Hollywood films. See Bordwell, Staiger, and Thompson, Classical Hollywood Cinema. Clover's description is, however, entirely consistent with a growing body of film criticism insisting on the persistence of spectacle and melodrama in mainstream American film.
94. Elsaesser, "Tales of Sound and Fury," 182.
95. Ibid.
96. Clover, "Law and Order," 105, 106. Clover also describes this as "the truth of exhausted possibilities" (105).
97. This is "a classical theme of film theory." Metz, "Photography and Fetish," 144.
99. Ibid., 92.
100. By 1922, it was evident that film is more than a series of photographs. It is "more precisely a series with supplementary components as well, so that the unfolding as such tends to become more important than the link of each image with its referent." Metz, "Photography and Fetish," 139.
101. Ibid., 144.
102. Ibid., 139. In this way, Barthes argues, unlike photography, film as a medium is continuous with the history of fiction. Barthes, "Rhetoric of the Image," 45.
104. Ibid. Bordwell asserts that "the use of narration to make us jump to invalid conclusions" in classical cinema is "rare" (30). But even where the narration does not do so explicitly, the camera's spatial omnipresence may, like many other early commentators on film, Benjamin argues that "the spectator's process of association" with filmic images is "interrupted by their constant, sudden change." Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," in Film Theory and Criticism, ed. Leo Braudy and Marshall Cohen, 6th ed. (Oxford University Press, 2004), 808.
106. Ibid.
Knowing It When We See It / 75

108. Vardac, Stage to Screen, 188.


110. Sklar, Movie-Made America, 54. Sklar goes on: "He [D. W. Griffith] was the first to forge them into a complete and original style of making movies."

111. Ibid., 52. Producers worried that audiences would be confused so films were composed of a few long shots in which action took place the way it would for audiences of a play watching a stage. In other words, the camera reproduced what the human eye could see in the unfilmed, everyday world.

112. Vardac argues that Griffith "worked continually to increase graphic realism. It seems that every refinement in editorial technique was associated with this desire." Vardac, Stage to Screen, 203. In a much-repeated story about the making of Griffith's Enoch Arden in 1908, Biograph Company was concerned that his use of a parallel cut-back (Arden's wife waiting for him, followed by Arden stuck on a desert island) would confuse the audience. Griffith reportedly countered with the query, "Doesn't Dickens write that way?" Eisenstein, "Dickens, Griffith," 201; Sklar, Movie-Made America, 51. Griffith himself was a frustrated writer.

113. Sklar, Movie-Made America, 54.

114. Ibid.


116. In an essay on Griffith, Eisenstein describes montage as "the play of juxtaposed detail—shots, which in themselves are immutable and unrelated, but from which is created the desired image of the whole." Eisenstein, "Dickens, Griffith," 232, (italics original).

117. Sklar, Movie-Made America, 56. In this way, Griffith redefined realism for film: in the early years, realism meant fidelity to the range of the human eye. After Griffith, filmic realism was severed from the limits of individual perception.


119. Ibid., 234.

120. Ibid.


123. Compare Michael Rogin's theory that it is actually about 1915 urban class and gender conditions in "The Sword Became a Flashing Vision," in Ronald Reagan, 200.


126. Scott v. Sandford, 60 U.S. 393, 411 (1856). Justice Taney repeatedly cites state antimiscegenation laws but such laws are strange evidence of black non-citizenship, since they apply to blacks and whites alike. The repetition of the association between interracial sex and black citizenship seems rather to heighten the stakes of the question of equal rights. See 408, 413, 416.


128. Plessy, 537.

129. The Birth of a Nation is loosely based on Thomas Dixon’s 1905 novel The Clansman, which Dixon also made into a play. Dixon was an outspoken white supremacist and both novel and play are explicitly racist.


131. Cuniberti argues that this scene represents the complicity of the North in the capture and selling of slaves, following Dixon’s representation of northern complicity in The Clansman (ibid., 37). Cuniberti points to additional intertitles and an image of a Yankee slave ship, lost in existing prints but described in early reviews, as further support for this claim.

132. Ibid., 38.

133. Ibid., 39.

134. Ibid., 40.

135. Ibid., 40–41.

136. Ibid., 47.

137. Ibid., 50.

138. Ibid., 59, 48.


140. Cuniberti, “The Birth of a Nation,” 62. In at least some copies, the shots during the fire are tinted red (63).

141. Here, the use of the iris invites the viewer to identify with the victims of “a great conqueror,” ibid., 65. Another Cameron son dies as refugees flee from a burning Atlanta.
142. Ibid., 66–67.
143. Ibid., 77.
144. Ibid., 79.
145. Ibid., 82.
146. Ibid., 83.
147. Ibid., 85.
148. Ibid., 86.
149. Ibid., 90
150. Ibid., 92
151. Ibid., 92–93.
152. As a historian, before entering politics, Wilson had in fact written these words. But Wilson was critical of the KKK as an impediment to reunion. Rogin, Ronald Reagan, 193.
154. Ibid., 98.
155. Ibid., 109.
156. Ibid., 111.
157. Ibid., 108.
158. Ibid., 111.
159. Ibid., 126 (italics in original).
160. There may have been a scene in which Gus is castrated in early prints of the film. See ibid., 131, and Rogin, Ronald Reagan, 217 (citing Seymour Stern).
162. Ibid., 147.
163. Williams argues that “nothing is more sensational in American cinema than the infinite varieties of rescues, accidents, chases, and fights. . . . While usually faithful to the laws of motion and gravity, this realism of action should not fool us into thinking that the dominant mode of such films is realism. Nor should the virility of action itself fool us into thinking it’s not melodrama.” Williams, Playing the Race Card, 21.
165. Cuniberti cites evidence for an additional lost scene here of black people being deported to Liberia (ibid., 167). The (in my reading) superficial thematicization of war is bookended in the final title and scenes. The title reads, “Dare we dream of a golden day when the bestial War shall rule no more. But instead—the gentle prince in the Hall of Brotherly Love in the City of Peace.” And the last shots are of mangled bodies and the God of War, a Christ figure superimposed over what Cuniberti describes as “a harmonious assembly of white people,” and Elsie and Ben now looking at a “vision of the heavenly city” (167).
166. A small number of frames are tinted red, marking highlights in the film’s melodramatic structure: the fire in the Cameron house after the Union
guerilla raid, certain shots in the defeat of Ben's Confederate troops by Phil's Union forces, certain shots during the Klan “trial” of Gus, and shots of the Klan gathering to rescue Elsie and the Camerons. The superimpositions in the final frames—the “God of War” with a “mass and tangle of bodies,” a Christ figure fading in and out of a “harmonious assembly of white people” walking and dancing “in garments of peace”—resemble nothing in the rest of the film. These descriptions are Cuniberti's, ibid., 167. But they do establish a metaphorical connection between the racialized binary of (white) justice and (black) evil in the film and of heaven and hell. They also resemble contemporary experiments in film that anticipate antirealism.

167. There was a robust tradition of blackface performance in nineteenth-century American theater but also a corps of African American actors working on the stage and in early film. Griffith could have used black actors to portray Lydia, Lynch, Gus, Jake, and Mammy but decided “to have no black blood among the principals” (Griffith in an October 1916 interview, quoted in ibid., 47–48). On the blackface tradition and nineteenth-century melodrama, see Williams, Playing the Race Card, 45–95.

168. This fact was treated by early film historians and critics as a different matter than the formal achievement of the film. Recently critics have begun to insist that this dissociation cannot stand. In my reading, the film's realism and its racism are inextricably and fundamentally connected.

169. Williams, Playing the Race Card, 5.
171. Ibid.
172. Ibid.
177. The city of New York finally settled the civil suit brought by the exonerated men for $41 million after the film was released but "denied and continues to deny that it and the individually named defendants have committed any violations of law or engaged in any wrongful acts concerning or related to any allegations that were or could have been alleged" in the settlement. Benjamin Weiser, “Settlement Is Approved in Central Park Jogger Case, but New York Deflects Blame,” New York Times, September 5, 2014. http://www.nytimes.com/2014/09/06/nyregion/41-million-settlement-for-5-convicted-in-jogger-case-is-approved.html.
178. Indeed, Sarah Burns said of interviewing Reyes, "I do think he's a sociopath; a lot of what he said to us felt like he was telling us what we wanted to hear." Griffin, "Profile of Matias Reyes."

179. The film emphasizes the "too late" narrative, even though the parents of others were present after six hours and in some cases during the videotaped confessions themselves. The film also emphasizes the way that timing affected the outcome of the arrests. The parents of several of the boys were present at the precinct by 2:30 a.m. but the police would not release them until all of the parents were there. Raymond Santana's father did not arrive until 5:00 a.m. In the interim, the discovery of Trisha Meili and her condition were reported to the precinct, and the boys became suspects in the rape. The boys might not have been in custody at all had Santana's father arrived earlier. Sarah Burns, *The Central Park Five* (New York: Vintage Books, 2011), 31–32. Linda Williams has emphasized the role of the "in the nick of time/too late" tension in melodramatic narratives. Williams, *Playing the Race Card*, 35.

180. According to Sarah Burns, the filmmakers "tried on numerous occasions to interview the police and prosecutors who had participated in this case from the beginning—and we were unable to at every turn." Public Broadcasting Service, "Q&A with the Filmmakers," accessed December 14, 2014, http://www.pbs.org/kenburns/centralparkfive/about/filmmaker-q/.


183. This is notably not the case in Sarah Burns's book *The Central Park Five* about the same events.

184. Clover, "Law and Order," 102. Clover relies on Tocqueville here for the assertion that "the legal system provides a rhetorical and logical template that gives shape to all manner of social forms above and beyond the court of law" (104).

185. Ibid., 104.


189. See, for example, Naomi Mezey, "The Image Cannot Speak for Itself: Film, Summary Judgment, and Visual Literacy," *Valparaso University Law Review* 48 no. 1 (Fall 2013): 1. On judges responding to filmed evidence generally, see


