Myths Of The Origin Of Law

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Every society has a set of myths about the origin of that society and its laws. Even a post-historical society such as ours, with its wholly non-mythical founding figures and its extremely well-documented process of legal development, has its myths, ranging from axes and cherry trees at one end to various conflicting stories about the importance of property and debtor-creditor relations on the other.¹

I don’t think anyone would deny that the Western movie is one of the richest sources of our myths about the birth of our most basic legal institutions. In this paper, I intend most straightforwardly to give a reading of one Western film, John Ford’s “The Man who Shot Liberty Valance.”² I chose this film for two reasons. One, it is one of the best Westerns ever made, with a very deep and subtle exploration of its themes. Second, it lends itself to an interesting comparison with one of the founding texts of Western civilizations, Aeschylus’ Oresteia.³ As most lawyers know, the Oresteia is the trilogy of Greek tragedies that begins with the murder of King Agamemnon by his wife Clytemnestra and her lover Aegisthus, continues with the revenge murders of Aegisthus and Clytemnestra by her children, Electra and Orestes, and ends not, as would seem
inevitable, with more murder committed by Clytemnestra’s relatives, or by the pursuing Furies (Erinyes), but by Orestes’ trial by fellow Athenians under the aegis of Apollo and Athena, an event which focuses on the Areopagus High Court, an event creating the Athenian democratic polis. Orestes is acquitted, and the train of blood-shedding comes to an end.

I do not put myself forth as a scholar of the 5th Century, B.C.E. Greece by any means. In my interpretation of Aeschylus’ Oresteia I am basically going to follow that of Hannah Arendt. But I think there are enough striking resemblances and contrasts between the Greek play and the modern film to throw into relief certain differences between ourselves and the culture out of which we originally sprang – differences that will help as to understand ourselves better. In particular, I want to show the 5th Century B.C.E. Athenians and we deploy distinctions between public and private in very different ways, and this should be of high interest to us because the public/private distinction has become particularly legally, and ideologically sensitive area for us in the last couple of decades. In particular, the concept and nature of marriage have become highly charged for us, to say the least.

AESCYLUS’ ORESTEIA: THE FAMILY AND NECESSITY

The Oresteia is about the transition from blood revenge to justice, as embodied in the jury trial of Orestes. It also embodies a transition from chaos to order. In the imagery of the play, it is a movement from dark to light, as embodied by Apollo, the god of light.
The first event of the trilogy is the appearance of a flicker of light in darkness. The end of the play is a processional on a (presumably) fully lighted stage.

Justice represents a movement from the individual righting of wrongs (based on pure power) to a justice based on argument and reason. And ultimately and most importantly, it is the victory of the polis (the state, as we call it) over the family.

The world of law emerges out of the world of the family and the dominance of blood ties, ties which define the individual. (So that in Athens, as in many undeveloped societies, people are known as “X, son of Y.” This is their name.) In the final play of the Oresteia, there appears for the first time the possibility of the citizen, someone who is primarily identified as a member of the polis, not a family (“Meno, the Thessalian”). The female in the Eumenides (the last play of the three) is represented by the Erinyes – horrible, repulsive, creatures whose task is to hunt down Orestes – more generally, to uphold the barbarous world which is even older than Apollo and Athena.5 (In Greece, the anthropomorphic Olympian gods were relative late-comers to Greek theology.)

The polis is presented in Aeschylus as an overwhelmingly male achievement, based on the suppression of the pre-legal female Furies. (Apollo’s famous argument that Orestes’ murder of his mother is not as serious as Clytemnestra’s murder of Agamemnon turns on the idea that matricide is less serious than patricide because the mother is merely the receptacle for the child, not a co-generator of it. This is virtually a denial of the maternal.)
The Oresteia reflects Greek theories of the polis, the institution that defines the public space. (Here I most closely follow the renowned political theorist Hannah Arendt’s interpretation of Greek political concepts, along with that of Hannah Pitkin.)

The Greeks viewed the polis as distinct from all other human organizations or associations. It was a freely self-governing community where members participated in the resolution of public concerns. It dealt with the common life in which all its members were implicated. It took place in a public space. (For the Greeks, before the polis, there was no public life, no public space in which all the citizens participated, could participate. It is clear in Herodotes that this is the main difference between the Greek polis and the Asiatic (“despotic”) state.) The polis dealt with the common life in which all members had an interest and a concern – or at least should have. (The Greeks had a word for persons who took no interest in the life of the polis, preferring to live a private life – that life was idiots – which literally means “private” but also implies everything in today’s derivation from it.) The public realm was the realm for the real man and real citizen. The polis was a realm of pure action because it was not productive, i.e., not “poetic,” in the Greek sense, in which covered it all actions which resulted in, or “produced” a thing. (So a steel mill would be “poetic.”) According to David Grene, the Greeks often distinguished themselves this way from despots, (which were associated with the East, such as the Persians or Lydians). As Pericles’ famed funeral oration shows, the Greeks viewed the polis as the source of their superiority over the barbarians. The rise of the polis out of the family and the despotism, for the Greeks produced a
public space that always resulted in the formation of events, relationships, and institutions. As Jaeger says, the polis gave man “besides his private life a sort of second life, his bios politikos [political life]. Now every citizen belonged to two orders of existence; and there is a sharp distinction in his life between what is his own (idion) and what is communal (koinen).  

Now, all considerations of biological necessity (sustenance, procreation, the continuance of the species, everything necessary to keep us alive (both individually and as a species), belonged to the private realm (oikos, meaning “house” or “household” in Greek). The private realm was therefore understood wholly as the center of necessity, the place where the things necessary for survival were dealt with. Public life was by contrast free because the constraints of necessity were taken care of in the other realm, the private realm.

A big difference between the Greeks and ourselves was that for the Greeks, violence and force are acceptable in the private sphere because these are the only way necessity can be mastered and humans can become free. Because all human beings are subject to necessity, they are entitled to use violence against others – violence is the prepolitical act of liberating oneself from the necessities of life for the freedom of the world.  

One way the Greeks manifested violence against each other was in what they considered the necessity of the institution of slavery, a totally accepted part of Greek
society. A man could not be truly free (which means, to practice the truly human virtues as, say, delineated by Aristotle in his *Nicomachaen Ethics* unless he had someone to take care of the necessities of life for him). Slavery is natural, but that does not mean that the Greeks thought some people were slaves by nature. Nor was slavery racially based in Greece – anyone could potentially become a slave. Rather, the Greeks (with the infamous exceptions of Aristotle, who did try to argue that some people were slaves by nature\textsuperscript{11}), the Greek saw slavery as a pure piece of bad luck that might befall any man — such as becoming a captive in war (prisoners of war were generally made slaves). Such a stroke of bad luck ruined the slave’s chances for true fulfillment as a human, but the Greeks still believed this was necessary so some might be free. As I said, who got to be free was a matter of luck (and power).

Indeed the whole concept of ruled and ruled, governed and governed, was prepolitical for the Greeks. The slave was a member of the private realm, the oikos. To be free meant to be not subject to the will of another, but it also meant neither to be in command of others oneself. It was neither to rule nor to be ruled.\textsuperscript{12} Probably no people since the 5th Century B.C.E. Athenians have held to such a pure idea of freedom and equality – but (necessarily) only for some.

The *Oresteia* allegorizes the originary act of violence which creates the public world of freedom and law, and allows the escape from cyclical, repetitious violent acts, each generated by the other, without end, as in the myth of the *Oresteia*. The violence is now not against others but against the self, against human nature itself. The part of
ourselves which is the object of violence is schematized, again, as the feminine part of human nature (i.e. the Furies.) Aeschylus therefore suggests that the creation of the legal and political order creates a permanent tension between the need fully to realize the human in the public world where a truly virtuous life is possible, and a man becomes fully human, on the one hand, and the deepest roots of human nature — the attachment to one’s own, the irrational passions that give rise to our sense of justice in the first place, on the other. The passions and emotions that are represented by the Erinyes have to be subordinated to the creation of that abstraction, the citizen under law. But if we didn’t retain those passions and emotions in some way, what would happen to our attachment to law, which grows out of those passions? What would human life be like if humans were not angered, even disgusted and repulsed by the rape and murder of a young child? Would we have a sense of what we now call justice? Athena and her polis, and the Furies and their desire for blood revenge, are dialectically related.

In the Oresteia, the unnaturalness of the polis is shown by the fact that the law has to be imposed by the gods. The ultimate question raised then by the trilogy is: is Athena a good model for human beings and their ways of organizing themselves? (Recall that the human jury would have handed Orestes over to the Furies – Athena is the tie-breaking vote that acquits him.) But aren’t the gods supposed to be models for us and our behavior? (“What would Jesus do?”)

The Greek way of drawing the public/private distinction is very different from our own. Our classical liberal conception is really the reverse of the Greek: the private is the
realm of freedom, the public the realm of coercion which is identified with the rule of law. For the liberal, the private realm is the realm in which virtue is possible because there each person can live out his or her individual conception of what is a good life ("lifestyle," we might say today). What is a good human life is a question on which the public sphere does not commit itself. (Most radically, for the liberal state there would be no human virtue. Pushpin is as good as poetry.) Rather, our public sphere engages in just the amount of limitation on our freedom necessary to allow us to "pursue our happiness," which is done purely privately, not together. Thus Arendt argued that we have come close to closing the notion of the public and public virtue altogether.\(^\text{13}\)

Why should the existence of the polis, the political, public realm matter so much to the Greeks? According to Arendt, it matters because it is the only way to achieve individual immortality. Nature moves along eternally — the flatworm generates more flatworms and so on and on and flatworms as an individual species survive immortally. (The Greeks did not foresee our ability to lose techne – art – to eliminate entire species.) But the human being is the one nature that craves individual immortality. Humans, of course, don’t live forever. But the memories of them can. And the memories that can survive of them are precisely memories of things they did in the public world — the things that made them heroes in the Greek way of talking. The Lincoln Memorial is only possible in a polis, as is even the smallest plaque to the war dead of the tiniest town. Arendt sums it up as follows: The Greeks' concern with immortality grew out of their experience of an immortal nature and immortal gods which together surrounded the individual lives of mortal men. Imbedded in a cosmos where everything was immortal,
mortality became the hallmark of human existence. Men are “the mortals,” the only mortal things in existence, because unlike animals they do not exist only as members of a species whose immortal life is guaranteed through procreation. The mortality of men lies in the fact that individual life, with a recognizable life-story from birth to death, rises out of biological life. This individual life is distinguished from all other things by the rectilinear course of its movement, which, so to speak, cuts through the circular movement of biological life. This is mortality: to move along a rectilinear line in a universe where everything, if it moves at all, moves in a cyclical order. The task and potential greatness of mortals lie in their ability to produce things – works and deeds and words – which would deserve to be and, at least to a degree, are at home in everlastingness, so that through them mortals could find their place in a cosmos where everything is immortal except themselves. by their capacity for the immortal deed, by their ability to leave nonperishable traces behind, men, their individual mortality notwithstanding, attain an immortality of their own and prove themselves to be of a “divine” nature.¹⁴

Taking this very crude outline of Greek thought as our background and its myth of the origin of law, I want to take as a contrast to a work of art much closer to us (temporally, and philosophically).

THE MAN WHO SHOT LIBERTY VALANCE
When we turn to “The Man Who Shot Liberty Valance,” (“MLV” for convenience hereon), we find a whole network of themes and images familiar to viewers of Hollywood Westerns. Unlike the Oresteia, the pre-legal world is one of pure freedom, one of “individualism,” one of the West as a blank space or realm, free of the mark of human habitation. And the coming of civilization and the rule of law are expressly associated with the female or feminine, again the opposite of the Oresteia.

But in both the worlds, there is an ambivalence about the achievements of the legal order.

I. SHINBONE AND ITS DENIZENS

For a film that celebrates the coming of law and order, of civilization, to the West, MLV’s image of modern Shinbone is strikingly ambiguous. It begins with a shot of a train coming across a Western landscape — a classic image of the coming of civilization (and one exploited beautiful in Sergio Leone’s Once Upon a Time in the West). But as has been noticed, Ford lingers on the immense cloud of dark smoke the train produces as it moves through the frame, a cloud ultimately almost obscuring the landscape. The train pollutes the land even as it brings progress.

For a film that is supposed to be celebrating the coming of law and order, modern Shinbone is not very appealing. Our first shot of Shinbone is of an aged Andy Devine. Behind him is a looming, institutional building, much too large, too fully constituted for a
western town like Shinbone, even in its “modern” form. The town of Shinbone is too placid; the movements of all the people in it are too stately. Ford uses no extras in the opening scenes (and very few in the entire film). A total of two people get off the rather large train: Jimmy Stewart and Vera Miles. This all gives Shinbone a sense of a place in which everything is past, a set in which the main characters have been placed.

Shinbone is a place that contains an undertaker who steals Tom Doniphon’s boots from his corpse. It contains a presciently rapacious paparazzi-like newspaper editor who shows a contemporary inability to respect privacy or to tell what is meaningful from what is not.

But above all one is struck by the utter falseness of Jimmy Stewart in the pre-flashback scenes. Let me say here that one of the great resources of film as an artistic medium is the resonance it gets from using the same individual, physical actors across many films. (This must have to do with the fact that film projects the physical actor as him or herself, while the stage actor is wholly absorbed into his role.) This is a resource not open to the stage, which can’t actually reproduce John Wayne or Bette Davis as film can. In a play, the actor is totally absorbed into the character. So as far as I can see, it lends no significance to Laurence Olivier’s stage performance in Sleuth that he once played Hamlet on stage. The better Olivier on stage as Hamlet is, the more it will be totally blotted out of your consciousness that he is anything but Hamlet. In a movie, the character is wholly absorbed into the actor. In a John Wayne film, whomever he is playing, John Wayne is John Wayne. This is the reason that some people who do not
understand the nature of film criticize film actors by saying things like this, “He can’t act; he’s always just being John Wayne (or Jimmy Stewart, or Bette Davis, or…).” But that is not a failing of either cinema or of the specific actor; it is simply a resource open to film that theater does not have available to it, due to the ontological difference between the way the actor is presented in film and on stage. A good film maker can make use of the recurrence of actual physical persons from film to film, as, for example, John Ford uses Henry Fonda in *Fort Apache* (1948). It is impossible to watch that film without having one’s experience of it inflected by the fact that Colonel Thursday is Tom Joad (*The Grapes of Wrath*) and Wyatt Earp (*My Darling Clementine*).

This resource is exhibited beautifully in the opening sequences of MLV. Jimmy Stewart, throughout his career in film, has always expressed a certain very specifically American sincerity and idealism, almost naïveté. (Grimly and frighteningly played on by Alfred Hitchcock in *Rear Window* and *Vertigo*.) We cannot watch MLV without thinking of *Mr. Smith Goes to Washington*. In MLV’s opening, pre-flashback scenes, we cannot help but be struck by the utter falsity of Jimmy Stewart. He appears here as a horrible parody of a Jefferson Smith, one who has been successfully corrupted by Claude Rains and is now helping the people of his state in “a thousand honest ways.”

Let’s skip to the convention scene in the capital scene, which is also ambiguous in its celebration of the coming of statehood (civilization). It is ambiguous in the utterly empty rhetoric of Starbuckle. (Whom we recall in *Stagecoach* doing the same thing as he does in MLV – using an aristocratic façade to hide a disreputable reality. But in
Stagecoach, John Carradine at his death knows that he can rise to the reality of the values he has theatrically projected throughout the film. It is impossible to imagine this of Starbuckle.) The utterly phony rhetoric and theatricality that surrounds the nomination of Buck Langhorne, Stoddard’s opponent – this is what the values of Tom Doniphon and the “Old West” have been reduced to, are being reduced to.

Yet it is also the case that the coming of the law is personified by Ransom Stoddard is presented as an advance, as progress.

As they get off the train, Hallie (Vera Miles), now the wife of Stewart, who we find is a senator, telling us immediately that the struggle for statehood was a success, runs to kiss Link Appleyard (Devine), who was U.S. Marshall in the pre-statehood days. (This basically made him the law in Shinbone in those days.) Stewart follows at a slow, dignified pace; both are dressed in black. The only luggage that appears is what looks like a large hat box.

The editor of the Shinbone Star and its young reporter corner Stewart for an interview, which we get the impression he’s not particularly averse to; in fact, he seems eager to leave Hallie alone with Link for the interview. They move into the newspaper offices for the interview. Hallie climbs into the buckboard Link had arranged for them. Hallie observes how many things have changed in Shinbone; Link simply replies, “Well, the railroad done that.” They then have the following conversation, all in low-key,
almost affectless voices. There are noticeable pauses between each statement. Link begins:

“Well, the railroad done that. Desert’s still the same. The cactus rose is in blossom. Maybe . . . (Long pause; here Link turns his head and looks for a long moment to off-screen left) . . . Maybe you’d like to take a ride out desert way, and maybe look around.”

“Maybe.”

Link then sets the buckboard in motion. I have stressed this scene simply because it is such a beautiful example of Ford’s ability to express emotions in an understated way that makes them far much more poignant. Here, we see that Hallie still loves the dead Tom Doniphon, that Link knows this at some level, but is unwilling to express that knowledge in a way that would possibly embarrass Hallie — yet they do wind up going to Doniphon’s unfinished house in the desert.

There, the cactus roses are indeed in bloom. Hallie points out to Link a particularly attractive one, and Link laboriously climbs out of the buckboard. We now understand the meaning of the hat box.

II. THE STRUCTURE OF THE FILM

As many commentators have, noted, the film is structured around a series of opposites:
The farmers/cattlemen opposition is a theme of many Westerns, a common type of the freedom/law opposition. (George Stevens’ *Shane*, with Alan Ladd, is possibly the most structurally perfect example of this theme; Michael Cimino’s infamous, but underrated *Heaven’s Gate* is another example.)

Ranse Stoddard has been talking politics with the local newsmen and dignitaries, but he is drawn into talking about why he came to Shinbone for the burial of the now unknown and forgotten Tom Doniphon – according to the editor of the *Star*, his readers just “can’t accept” the story that the Senator came to this town for “private reasons.” Apparently these don’t exist for his readership. This launches Ranse, encouraged by Hallie, into the flashback which takes up the bulk of the film. It is triggered for Ranse by his spotting of a dust-covered stagecoach setting in a corner of the room. (As what? – a memento to earlier times? A piece of junk?) Ranse murmurs, “Well, I declare,” as he wipes the dust off the coach. What we are going to get now is indeed his Declaration, something we feel he’s been wanting to make for a long time. As Ranse remarks, his
story might begin with this very stagecoach, which brought him West. Indeed, it looks like the stagecoach in Ford’s 1939 *Stagecoach*. One wonders, in how many films have we seen that very stagecoach rolling across the plain?

At this point, the beginning of the flashback, the film begins to develop two main narrative lines. First is the conflict between the cattlemen, epitomized by the sadistic Liberty Valance, and the advocates of statehood, which would give the state the power to close the open range by subdividing it into properties, thus no longer allowing the cattle to graze freely. Second is the relationship of Ranse, Tom, and Hallie. When Ranse comes to town, it is generally understood by everyone in town that Hallie is “Tom’s girl.” Although he has not yet (through fear?) asked her actually to marry him, he is building the above-mentioned house in the desert, a house which symbolizes this relationship and the construction of what I think is understood by everyone, including Hallie and Tom, to be a proposal of marriage. The course of this narrative is Hallie’s switch from being “Tom’s girl” to “the Senator’s wife.”

I will not go through the narrative consecutively; I will assume the reader’s familiarity with it. Instead, I’m now going to offer some remarks about the film which, at times, may seem to stray far from the film, but which I hope will eventually cohere into what you would call a “reading” of the film.

The pre-legal world is the world equally of Liberty Valance and Tom Doniphon, and no other Western, with the possible exception of Ford’s *The Searchers*, goes so far in
passing off, establishing in so many ways, continuity between its hero and its villain.  
(“Liberty Valance is the toughest man South of the Picket Wire, except me.”) The famous “steak scene” faces the two men off as exact mirror images. This triangular relation gives MLV its complex dramatic structure.

It’s manifest that within this structure Stoddard is identified as the feminine character. At the very beginning, in the robbery scene, Valance refers to Stoddard as a “ladies man,” a phrase in the context with a clear double meaning. Stoddard goes to work at the Café to pay for his room and board and is thus constantly shown wearing an apron and washing dishes (he doesn’t even get to cook the food.) In the steak scene, Valance says succinctly to him, “Well, look at the new waitress.” What does all this mean?

I connect it with another aspect of the film: the emphasis on the relation between the coming of law and the coming of literacy, a common language. Reference to language is a constant theme in the film. Most importantly, Stoddard teaches Hallie (I think deliberately a name that would not be familiar to audiences of the American city audiences of the time) and others to read.

More generally, in Shinbone, people continually have problems of language. Kentuck stutters – is this just comic relief or is it a pattern, which includes malapropisms and failures of language by people by Andy Devine. (We can’t have that much comic relief.) Moreover, Ranse is continually correcting the grammar and word usage of the people of Shinbone – he seems to do it almost unconsciously.
And, of course, Valance is explicitly hostile to writing and language. In the initial robbery scene, he tears the pages out of Stoddard’s law books, saying that he is showing Stoddard “Western law.” And he attacks the Shinbone Star office, nearly killing editor Dutton Peabody when Peabody comes out editorially against the cattlemen. The scene of Valance and his minions destroying the printing machinery as they beat Peabody is one of (the) film’s most powerful images of chaos and anarchy.

The emphasis on language and the problem of its commonality reflect the extent to which this film is about the attempt to establish a community, what it takes to create and sustain a community. As Stoddard says just after his attack by Valance, “What kind of community have I come to?” This is the essential question of the film: what is the nature of community and how can it be formed and sustained? Does Shinbone have one?

I read this aspect of the film, the connections between community and language as almost an allegory of the procedures and demands of ordinary language philosophy, that of the later Wittgenstein, J.L. Austin and Stanley Cavell.17 What I am going to do now is discuss the main themes of this type of philosophizing; this seeming digression will give us a context for coming back to the film and understanding it more deeply.

III. ORDINARY LANGUAGE PHILOSOPHY
Ordinary language philosophy begins with two facts. First, we only learn the words of our language in certain contexts. Second, we are expected to use those words appropriately in new contexts. To do this is what it means to “learn a language.” How do we learn to do this? It is in response to this question that philosophers have over the centuries developed the philosophical doctrine of universals. According to this doctrine, learning a word means grasping a concept which tells us what applications of the word are the “same” as past applications. A large part of the force of Wittgenstein’s arguments are directed against the idea that universals of some sort can adequately explain how language really works.

What we do with language is learn how, as Cavell puts it, “to make appropriate projections into new contexts.” The Wittgensteinian teaching is that this ability is “groundless,” ultimate; it does not rest on anything more fundamental or foundational, in particular anything like “concepts.” Wittgenstein usually expressed this idea by saying language is part of humans’ “form of life.”

We learn and teach words in certain contexts, and then we are expected, and expect others, to be able to project them in further contexts. Nothing insures that this projection will take place (in particular, not the grasping of universals nor the grasping of books of rules), just as nothing insures that we will make, and understand, the same projections. That on the whole we do is a matter of our sharing routes of interest, and feeling, modes of response, senses of humor and of significance and of
fulfillment, of what is outrageous, of what is similar to what else, what a rebuke, what forgiveness, of when an utterance is an assertion, when an appeal, when an explanation -- all the whirl of organism Wittgenstein calls “forms of life.” Human speech and activity, sanity and community, rest upon nothing more, but nothing less, than this. It is a vision as simple as it is difficult, and as difficult as it is (and because it is) terrifying.  

There are two striking facts about our ability continually to project words into new contexts. First, it is striking that language has this flexibility, has this freedom built into it. “We learn the use of ‘feed the kitty,’ ‘feed the lion,’ ‘feed the swans,’ and one day one of us says ‘feed the meter,’ or ‘feed in the film,’ or ‘feed the machine,’ or ‘feed his pride,’ and we understand, we are not troubled.”

The second striking fact about our ability to project is that not every projection will be acceptable.

While it is true that we must use the same word in, project a word into, various contexts (must be willing to call some contexts the same), it is equally true that what will count as a legitimate projection is deeply controlled. You can “feed the peanuts to a monkey” and “feed pennies to a meter,” but you cannot feed a monkey by stuffing a pennies in its mouth, and if you mash peanuts into a coin slot you won’t be feeding the
meter. Would you be feeding a lion if you put a bushel of carrots in his cage? That in fact does not eat them would not be enough to show that you weren’t; he may not eat his meat. But in the latter case “may not eat” means “isn’t hungry then” or “refuses to eat it.” And not every case of “not eating” is “refusing food . . .” What will be, or count as, “being fed” is related to what will count as “refusing to eat,” and thence related to “refusing to mate,” refusing to obey,” etc.²⁰

It is the fact that our ability to project words into new contexts is controlled that gives rise to the characteristic procedures of ordinary language philosophy. This is because it is this characteristic of language use which gives us a ground for saying that someone has “misused” a word or phrase. This gives a familiar picture of the way ordinary language philosophy works.

Take an example from J.L. Austin. If I say to you, “Do you dress the way you do voluntarily,” what do I mean? What will you take me to mean by that; what must you take me to mean? That there’s something odd, wrong, unusual, and abnormal about the way you dress. The issue of the volitariness of an action can only be raised in this type of context. Wittgenstein would say it as one of the criteria for the application of the term “voluntary,” is the “fishiness,” as Austin puts it, of the action in question.

This has consequences for the traditional philosophical problem of free will and determinism, because you can’t even raise that problem unless you assume that the
question, “Are you acting voluntarily?” can meaningfully be raised about every action we take, everything we do. The ordinary language philosopher’s argument then is that the traditional philosopher who raises the traditional problem of free will is using the word “voluntary” apart from its ordinary criteria. This argument begins with “what we say,” how we actually use the word, “voluntary,” and moves to a conclusion that the philosopher has “misused” the term.

Again, let me be clear. When I say the philosopher has “misused” the word “voluntary” when he asks, “Did you get out of bed this morning voluntarily?” I mean that he uses the term “voluntary” apart from the sort of context in which the term can be used meaningfully. You cannot ask about every action whether it was done voluntarily or not. You must have some specific reasons for supposing that I did not get out of bed voluntarily – perhaps the Drill Sergeant has told us we can sleep until 8 a.m. today and you got out of bed at 5 a.m. anyway. Then it might make sense for me to ask, “Did you do that voluntarily?” (Or did you do it out of force of habit, because you forgot what the sergeant said, etc.) Austin’s main philosophical point was that the ancient problem of “free will vs. determinism” has been distorted by philosophers’ assumption that all action must be classed as voluntary or involuntary. This is not true. About most acts we do the question can’t even be seriously raised. That is part of what Wittgenstein called the “grammar” of “voluntary” but it is true in the vast majority of words that they have a “grammar” that provides conditions for their use.
However, matters are not as simple as this. Let’s look at another concrete example. One of our most controversial and bitter moral issues is the morality and legality of abortion. This encompasses a number of separate issues, but one major one is this: whether fetuses are persons and whether, therefore, abortion is murder. Steven Ross has argued that fetuses cannot be called persons and that this is shown by the fact that even the most fervid opponent of abortion does not respond to fetuses as if they were persons:

[A] mother who loses her fetus in a miscarriage simply is not seen to have suffered the sort of loss suffered by someone who loses his eighteen-year-old son in war; the most vehement ‘right to lifer’ does not seriously consider treating a woman who has had an abortion exactly as if she were guilty of murdering an adult, and so on.21

Cavell has set out an argument similar to this. He says that the assertion that embryos are persons “cannot fully be meant” by those who assert it.

And in saying that the conservative cannot fully mean that human embryos are human beings I am saying that no conservative of sound mind abhors those who request and perform abortions as he would or should abhor Herod and the minions of Herod . . . Herod must at all costs be stopped.22
Are we to conclude that the conservative who claims that fetuses are persons and that abortion is murder are “abusing” these words or even using them “without sense?” That would seem to be the conclusion forced in use by our little discussion of “voluntary.” But we cannot make assertions like that. Calling a fetus a person and abortion murder is a projection of those words, just like “feed the meter” or “feed his pride” is a projection from the “feed the cat.” We cannot say that “we do not say that ‘fetuses are persons’” (the classic ordinary language line of attack) because some of us do say that, and there is no reason to assume that those who do say it are any less masters of their ordinary language than those whose reaction is that it cannot be said. This is because in deciding “what we say when,” we are all equally authoritative sources of “what we say.” As Hallie’s father says, “The people are the law.”

All we can do in this situation is to try to get the conservative to see that he himself or she herself does not want to say that “fetuses are persons.” We would do that by adducing those sorts of considerations about how we react to fetuses that Ross and Cavell put forth. But we might fail, the conservative might still insist that fetuses are persons. Then what is the situation between us? Should we say that we are “right” and the conservative is “wrong?” What would we be right and wrong about? We are both equally authoritative sources of data about “what we say.” What is most accurate to say is that we do not form a community on the question of whether fetuses are persons, that here community has failed; relations between us have broken down.
The philosophical appeal to what we say, and the search for our criteria on the basis of which we say what we say, are claims to community. And the claim to community is always a search for the basis upon which it can or has been established. I have nothing more to go on than my conviction, my sense that I make sense. It may prove to be the case that I am wrong, that my conviction isolates me, from all others, from myself.\textsuperscript{23}

Of course, the temptation will always be to “rule out” the conservative from “our” community (and vice-versa). The situation is analogous to that we are often faced with in trying to initiate someone, perhaps a child, into our language. This is the reason why scenes of language instruction and initiation play such a large role in Wittgenstein’s \textit{Philosophical Investigations}. They reveal to us what are our possible responses when faced with any divergence of language usage. Most fundamentally, we can either concede to the deviant speaker his or her way of using speech, or we can decide that that person is “incompetent” in this particular area, ruling out what he or she says as acceptable to us.

In one of his typical examples of a scene of instruction in a primitive language game, Wittgenstein says:

The children of the tribe learn the numerals this way: They are taught the signs from 1 to 20…and to count rows of beads of no more than 20
on being ordered, “Count these.” When in counting the pupil arrives at the numeral 20, one makes a gesture suggestive of “Go on,” upon which the child says (in most cases at any rate) “21.” The last stage of the training is that the child is ordered to count a group of objects, well above 20, without the suggestive gesture being used…If a child does not respond to the suggestive gesture, it is separated from the others and treated as a lunatic.24

As Cavell says, an example like this makes one feel anxious: This tribe seems a little too eager to brand children as “lunatics.” But the example brings out what is latent in Wittgenstein’s entire treatment of language—there is always a point at which “instruction comes to an end” and if it the instruction does not “take,” i.e., the student does not then “go on” as we go on, does not go in a way that we are willing to recognize as similar to our way of using words, then we face the question of what our response to that student will be.

Let me give further example from Cavell – the use of the phrase “all of it.”

I ate the apple. Did you eat all of it?

I smoked the cigarette. Did you smoke all of it?

I played the Brahms concerto. Did you play all of it?

Cavell then imagines what our response would be if someone did not “go on as we do” with words in each of these instances.
If I ask, “Have you eaten all of the apple?” and you answer flatly, “Yes,” then what will your response be if I walk over to look and say, “But you haven’t eaten it all; you’ve left the core, and then stem and the seeds to waste?” You may tolerate that. Perhaps that is my form of life with apples; I “eat apples” that way and that is not so bizarre but that you may be willing to accept my version of “eating all the apple” and fit yours to it, conceding, “I ate all of it except the core.” But this tolerance has its limits. If on another occasion someone objects, “But you haven’t smoked all of the cigarette, you have left the whole filter to waste,” then even if he normally drags on the filter until the ash gives out, and then chews and swallows the rest, we are not likely to accede to his version of “smoking the whole cigarette” and effect a reconciliation between his and our version of that activity, saying, “Well, I smoked it all except the filter: “his way of “smoking” is too bizarre…

Two things stand out here. First, the problem confronting us in every case like this is acceptance into a community of discourse. Second, the way in which we go about trying to form a community is to try to imagine a “form of life” in which the deviant use of language can be understood. Cavell applies the same approach to his discussion of Wittgenstein’s well-known story, in the Remarks on the Foundations of Mathematics, of a tribe who sell wood according to the amount of ground covered by the pile of wood being sold, regardless of (what we’d call) the amount of wood in the pile. Wittgenstein
says that if we can’t get these people to see that there is, e.g., more wood in a taller pile, than “that would be the end of the matter.” The implication is that we then would dismiss this tribe as irrational, their way of measuring wood as incoherent. We would cast them out of our community of rationality. Cavell counters that if we assume they are in fact rational, we can imagine all sorts of considerations which might make sense out of this tribe’s way of measuring wood. (Does wood come in standard piles? Do all their buildings contain the same amount of wood?) What we are faced with in these examples is the nature of our relation to the members of these people, and establishing a relation with them means somehow being able to come to see what they do and say as a reflection of the same human interests, responses, concerns—the same “form of life”—as ours.

-Who is crazy? I do not say no one is, but must somebody be, when people’s reactions are at variance with ours? It seems safe to suppose that if you can describe any behavior which I can recognize as that of human beings, I can give you an explanation which will make that behavior coherent, i.e., show it to be imaginable in terms of natural responses and practicalities. Though those natural responses may not be mine, and those practices not practical for me, in my environment, as I interpret it. And if I say “They are crazy” or “incomprehensible” then that is not a fact but my fate for them. I have gone as far as my imagination, magnanimity, or anxiety will allow; or as my honor, or my standing cares and commitments, can accommodate. I take it that this is
what Wittgenstein’s Swiftian proposal about separating out the child and treating it as a lunatic is meant to register.

Cavell provides this very concise summing up of this aspect of his thought:

Here my thought was that skepticism is a place, perhaps the central secular place, in which the human wish to deny the condition of human existence is expressed; and so long as the denial is essential to what we think of as the human, skepticism cannot, or must not, be denied. … In [Wittgenstein’s] Investigations we share criteria by means of which we regulate our application of concepts, means by which, in conjunction with what Wittgenstein calls grammar, we set up the shifting conditions for conversation; and the explanatory power of Wittgenstein’s idea depends on recognizing that criteria, for all their necessity, are open to our repudiation, or dissatisfaction (hence they lead to, as well as lead from, skepticism); that our capacity for disappointment by them is essential to the way we possess language, in perhaps the way that Descartes found our capacity for error to be essential to our possession of the freedom of the will. (If we could not repudiate them they would not be ours, in the way we discover them to be; they would not be our responsibility.)

The deep linkage in Cavell here is between the notions of privacy and responsibility.

Let’s take privacy first: it is generally supposed that skepticism condemns us to an
irreducible privacy, the privacy of our own sensations, of our own experience. Actually, the opposite is true. It is only in a world of mutual acknowledgment that we can discover, or redeem, our true innerness, our true privacy, the privacy of a self. Skepticism actually destroys our privacy.

Cavell says that for Wittgenstein, whether to speak (to proclaim anything) has two aspects. First, determining whether to *count* something as something, to use language to *make* a projection (‘That is a table, a toothache, a voluntary act, an act of murder.’) Second, finding your assertion to be called for on that particular occasion, being willing to take the responsibility for *calling out* what you have counted (i.e., “declare yourself in a position to inform or advise or alert someone of something, or explain or identify or remark something to someone.”) Therefore, Wittgenstein’s vision of language, far from being a denial of privacy, rests on a vision of an underlying privacy:

The wonder is within that we can arrive at the completed edifice of shared language from within such apparently fragile and intimate moments—private moments—as our separate counts and out-calls of phenomena, which are after all hardly more than our interpretations of what occur, and with not assurance of conventions to back them up.

Speaking a language is thus the taking on of the responsibility of *speaking for others* based upon one’s own reactions and responses; it is the willingness to declare oneself as representative of others reactions and responses and to be accepted by them as
representative, to be willing to be representative, common (e.g., as not different, not special, not unique but only separate.) And this is the foundation of human community.

The concept of responsibility is critical because establishing this sort of community is not just given, and there are many different degrees of depth to which our community might reach. Go back to the example of abortion again. Tribe’s recent book on abortion was entitled The Clash of Absolutes. This captures the sense, which many share, that the opposing positions on abortion are irreconcilable and the conflict is simply insoluble, that there is no community that can be formed by liberals and conservatives on this issue. But it is not insoluble, if we are willing to attend to what really matters to us, what our responses and attunements really are. A willingness to measure our use of words like “person” and “murder” against our actual responses might lead, on the conservative side, to a movement from the self-defeating sterility of a debate so often dominated by conflicting ideologies or philosophies. “Pro-choice” liberals would have to show a similar willingness to measure their use of words like “choice” against our actual responses to situations in which we say that it is (rightly) up to someone to make a choice, in particular, that it does not mean that choices are reflections of pure inclination and are not open to criticism, moral and otherwise. Just because a fetus is not a person does not mean that to “choose” to have an abortion is no different from choosing to go on a diet. We take responsibility for our criteria for words like “murder” and “choice” because of the (“philosophical”) possibility, realized so unfortunately often in the abortion debate, that we can use words apart from their normal criteria. The use of words
in accord with our real responses, interests, cares and commitments is not programmed into us. It’s something we do or fail to do.

And if we find ourselves faced with someone who uses words differently from the way we do, we bear the responsibility for deciding when and where we are going to draw the boundaries of community to exclude or include that person. The temptation is always to draw these boundaries too quickly, without engaging in the hard task of seeing whether there is “something in” the other’s “way of going on,” whether his or her usage does not alert us to aspects of human response which we have been overlooked or to which we have become insensitive. It is always so tempting and so easy simply to draw the lines of community with terms like “right wing fanatic” and “baby killer.”

What is at play in the creation of community is the willingness to use language representatively, to speak for others and to allow oneself to be spoken for by others. These two are two sides of one coin – to be able to speak for others entails acknowledging them as others, which means as having as much a claim on the ability to express your commonality as you do. It means giving up the desire for pure privacy of Liberty Valance. We will now begin to return to the film and its significance.

IV. LAW AND PRIVACY IN THE WEST

The privacy of experience is the classic problem of philosophical skepticism. If experience is private, if all words have private meanings by reference to our own experience, because only given sense for us by us, then we can never know what others
are thinking or feeling – a pure sense of aloneness, solipsism. Wittgenstein shows this is something unintelligible here, that there can be no private language.

The idea of a “private language” is the idea that I learn what words mean by referencing them to my own experience and then applying them “by analogy” to others. The classic philosopher’s example is the word “pain.” According to the philosophical tradition, I learn the word “pain” by referring introspectively to my own internal state. The question then becomes, how do I ever know anyone else is in pain? The only answer seems to be: by observing how I behave when I feel the internal sensation I call “pain”, then observing whether others show similar behavior. I then conclude the other is in pain. It is immediately clear that this is a weak argument at best (he might always be feigning or more scarily, he may express pleasure by ways we use to express pain, like moaning). The inevitable conclusion is that we can never really know when or if another is in pain. Notice this all begins from the idea that my giving meaning to the words of my language is a private act; from this follows the skeptical conclusion that we can ever know the feelings of others.

This whole argument Wittgenstein refutes by attaching the picture of language underlying it. Let me quote Hannah Pitkin again:

Austin makes this point about the concept of anger: the feeling of being angry, he says “is related in a unique sort of way” to its characteristic behavioral expression. “When we are angry, we have an impulse, felt
and/or acted on, to do actions of particular kinds, and, unless we suppress the anger, we do actually proceed to do them. There is a peculiar and intimate relationship between the emotion and the natural manner of venting it, with which, having been angry ourselves, we are acquainted. The ways in which anger is normally manifested are natural to anger just as there are tones naturally expressive of various emotions (indignation, etc.). There is not normally taken to be such a thing as ‘being angry’ apart from any impulse, however vague, to vent the anger in the natural way. Moreover, besides the natural expressions of anger, there are also the natural occasions of anger, of which we have also had experience, which are similarly connected in an intimate way with the ‘being angry’. It is possible to feign anger (or pain), and it is possible to suppress any expression of anger (or pain). But if there were no characteristic expressions of and situations for pain or anger, we could never be taught to use those words. We could not be taught what counts as our own pain, because no one would have any way of telling when we were in pain. And we could not be taught what counts as someone else’s pain because there would be no way of telling when he is in pain. Without some characteristic expressions of pain, indeed, we could not have the concept of pain.
But Wittgenstein has suggested (and this is in a way the most innovative idea of his philosophy) it is a profound human desire to escape the web of mutual obligations, which make us all ordinary, and to try to become unique, exceptional. The desire for Exceptionalism is the fantasy that underlies the private language argument – we saw that it was the idea underlying the Greek idea of the polis. The polis was a realm where we could achieve pure individuality, immortality through pure action. The polis is a creation made for Liberty Valance. (This is why in Plato’s Republic the great temptation for the young men with whom Socrates concerns himself is whether the life of the tyrant is the best life for men, as is urged by Thrasymachus.

The drive for Exceptionalism is the fantasy that underlies the private language argument – as we saw that it was the idea underlying the Greek idea of the polis. The polis was a realm where (in theory, in fantasy – the same thing?) one could achieve true individuality. Liberty Valance is that idea of freedom and individuality (which gave the Greeks their sense of immortality) taken to its ultimate extreme. Valance’s commitment to his utter privacy, his distinctiveness (you can’t possibly imagine him having a real friend, only minions), is of course, represented by his silver whip. One of the memorable shots of the film is the shot of Liberty’s silver whip slamming down on the table at the beginning of the steak scene. Valance is the embodiment of skepticism – the drive to uniqueness, which means the repudiation of the idea that one is constituted by others’ claims on us, that language is necessarily common. This turns him into the pure Villain. But it is also the case that the drive to repudiate the human is also definatory of the human – as the mirroring of Valance by Tom Doniphon shows.
As Shane shows also. Shane never uses his gun except at the very end of Shane, to kill Wilson (Jack Palance). This is followed immediately by a shot of Alan Ladd twirling his guns before dropping them back in his holster. This gesture, filmed in a giant close-up of the guns, shows, as Stanley Cavell says, that “he recognizes that he cannot forego his mark of mastery, his taste for distinction.”

Then why doesn’t Shane become Liberty Valance? Wouldn’t you want to? Wouldn’t you want to do whatever you want, knowing you get away with it, because the logic of skepticism, the logic of Exceptionalism is that everyone has to follow the rules except you? Cavell puts the issue this way:

If we accept the inner relation of the bad and the good man – that both are outside the law, the one because he’s strong enough to get away with it, the other because he’s strong enough to impose his own code upon himself and have it respected, hence that each denies the other’s existence and is fated to try to rid his outer realm of the other – then it cannot be true that the satisfaction of powerful Westerns consists merely in viewing again and again the triumph of good over evil. If that were all, the arbitrariness of victory would have only the anxious pleasure in watching a game of chance. The anxiety in the Western is a deeper one, watching the play of fate. The victory is almost arbitrary, and the hair’s-breadth lets in the question: What is the fate that chooses the stronger to
defend the good? Evil is always victorious in the short run, why not forever? Why is it the fate of good in an evil world ever to attract strength in its behalf, and strengthen it? Because God is a mighty fortress? So is a mighty fortress; and it is very hard to tell one from another. And in the all but complete absence of public virtue, and the all but invincible power of the empty demagogue and the empty mass filling one another’s spirits, how much do we depend upon a point at which the desire for good appears fairer than the taste of rancor and the smell of power? Plato asked it first, and while he undertook to prove that justice brings happiness to the just, he did not claim that justice would in fact prevail; he predicted the opposite. The question is not, Why should I be moral? – to which the answer may be that you are too cowardly for much of anything else. The question is whether the fate of goodness will be to lose its power to attract, whether all men and women will despair of happiness.\textsuperscript{28}

Why does Shane help protect the farmers (“the sodbusters”) when he would at some level seem to have more in common with the ranchers? Why does Tom Doniphon destroy himself by violating his own personal code, murdering Liberty Valance from a place of darkness?\textsuperscript{29} Clearly, in Doniphon’s case, he feels that Shinbone needs Ranse to survive. Cavell says,
In *The Man Who Shot Liberty Valance*, the John Wayne character knows that when he kills the brute (and Lee Marvin’s brute is also a false dandy, with his silver-handled whip) he is killing half of himself. He has to do it because he knows that the James Stewart character is incapable of preserving himself either from the brute or from true or false dandies; and he must survive, because he is the only real man around who has left room for the woman in himself. Wayne calls him “tenderfoot.”

But he also says “he knows how to throw a good punch.”

Obviously, at one level, Cavell means that Ranse’s inherent goodness/femininity draws Doniphon’s strength to his aid. But I think the film’s moral is even more complex, and self-reflective, than that.

First, I want to draw attention to a fact about the film that seems obvious to me, but may not to some viewers. As Tom and Pompey stand in the alley, watching the painfully prolonged gunfight between Ranse and Liberty, I find it impossible to view the scene as a synoptic view of one “reality.” What I mean by that is that the scene appears to me very strongly as a soundstage containing Ranse and Liberty, and an off-stage area in the foreground containing Tom and Pompey, who are literally in a different “reality,” not part of the soundstage but looking at the soundstage. So that if one could see slightly to their left or right, we would see not Shinbone, but cameras, lights, etc. I don’t know how I’d be able to prove my impression to a viewer who didn’t see it. (I think in part it has to do with the way the parts of the scene are lit.) Let me note that this brief scene is
the entire second flashback (told by Tom to Ranse within the first lengthy flashback), and it is as if this flashback Tom and Pompey shows Tom and Pompey stepping out of the world of the film and viewing it from outside. “Accepting the limitation of one’s individual power\(^3\) can attract higher power to one’s aid.”

Of course, Ranse’s referral to leave Shinbone and go back East, as Tom has urged him so many times to do, draws Tom’s power to his aid. But more than that is involved here, as I’ll try to explain:

John Ford is generally accepted to be one of the “classical” Hollywood directors who ruled Hollywood filmmaking (with the odd exception or two like Orson Welles) from the sound era until well into the ‘50’s. These include, besides Ford, Howard Hawks, Raoul Walsh, George Cukor, Frank Capra, Leo McCarey, and many others. The characteristic of this type of cinema is that in it the film frame functions as a window on a realistic world, just like the picture frame in imitative painting did. In fact, there is no use by Ford of slow motion, stop action, fast forward, etc. – none of the devices from the early ‘60’s which called your attention to the fact that you were watching a movie. The film just told its story.

But in MLV, the second flashback sequence I have just described is filmed in an extraordinary, attention-getting way. The shot begins with the screen, not unusually, pure black. But then John Wayne emerges directly out of the camera, so we realize the initial blackness is the blackness of Wayne’s black shirt. Wayne then kills Valance, throws the
rifle back to Pompey, then turns and walks directly back into the camera, his black shirt again totally filling it so that it “fades (in a sense) to black.”

What is the meaning of this? The extra movements of Wayne, to me, identify Wayne with the power of the camera itself. He is identified with the camera and vice-versa, and he takes on its power, its power to mythize. This gives a whole new meaning, I presume intended by Ford, to the man who “shot” Liberty Valance.

Liberty Valance is the character in the film who wants to create his own private world and live unhampered by any claims by or commitments to others. But he exists only because John Ford has made him – by wanting to create his world, he is usurping Ford’s role, the world of the creator of MLV. Ford intervenes to defeat Valance’s claim to originality, to be the author of his world. Valance’s death reveals him as Ford’s creation. His fate is an allegory of the fate of skepticism – Ford destroys him and his pretensions to create a world in which he would be the only real person – everyone else would be an object. Tom Doniphon is Ford’s instrument in this demonstration.

Yet Ford himself is not immune from the rigorous conditions of community. His surrogate, Tom, must withdraw from the world of the film, leaving the world of the film to Ranse and Hallie. Because of course, when Tom kills Liberty, the two branches of the narrative converge: Tom saves Shinbone for Ranse but he also saves Ranse for Hallie, whom he has come to realize that Hallie loves, and he wants her to be happy.
Yet Ranse – and this must be stressed because so many commenters miss it –
cannot and does not establish a real community of law, a real community of equals.

I think this is meant to be revealed to us in the schoolroom scene. Many people
have felt uncomfortable watching that scene – Ranse seems at his worst – stuffy and
priggish. He particularly treats Pompey in a patronizing, almost insulting fashion when
Pompey tries to recite the Declaration of Independence. There is a moment of complete
absurdity where the coming of literacy is emblematized by a large group of Mexican-
American children (all apparently the product of Link and “Hoolietta”) recite the ABC’s.
And the class finally ends when Tom breaks in and says that, first, Liberty and his men
are coming and second, that there is work to be done on his ranch and Pompey has to
abandon trivialities like the Declaration of Independence for real work. Pompey obeys.

It has been noted that contradiction is the film’s treatment of Pompey. On the one
hand, he is always referred to as Doniphon’s “boy” – seemingly degrading. Yet
Doniphon treats him much more like a man than Stoddard does in the classroom scene –
Stoddard really patronizes him. In his relations, with whom does Pompey (and all the
others) have more dignity?

(I might also note here that Stoddard’s femininity must be balanced by Hallie’s
masculinity. At one point, when she is infuriated by Link’s (or anyone’s) failure to do
anything to stop Liberty Valance, Doniphon says to her, “You’re mighty pretty when
you’re mad.” A lot of people find this to be an extremely patronizing remark. Perhaps
on one level, but as I argued earlier, our system of morality rests (as the Erinyes show) on our natural ability to be angered by injustice, by unnecessarily inflicted pain. There is something noble, illuminated in a person angered by injustice. This, I take it, is what Tom sees in Hallie – her ability to express it represents her masculine side.)

Ransom Stoddard can’t alone establish a world of law and equality. Such a world can’t be imposed by any one, unless perhaps it is a goddess like Athena. But the gods have left us.

Likewise, Ford must withdraw from the film he has created and hand it over to our privacy. Ford cannot author our response to, an interpretation of his work. This is part of the grammar of “work of art.” If community is to be established by this film (which I believe is Ford’s intent in making it, to show us the way to replacing the world of Shinbone with something better), it’ll have to come in our acknowledgement of what it says is true about us.

MLV gives us the knowledge that the true community does not yet exist, that we are not members of a real community. The shot that kills Liberty Valance also kills the “Tenderfoot,” turning him into the “man who shot Liberty Valance.” Starbuckle brings this point up very strongly at the statehood convention. (‘His only claim to repute is that he killed a man!’) A chaotic near-brawl breaks out in the hall between Stoddard’s and Langhorne’s supporters, and an ashamed Stoddard slinks out of the hall. There he runs into Tom, to whom he says, “Isn’t it enough to have to kill a man without having to build
a life on it?” Tom tells him the true story. Ranse then turns and goes back into the 
convention hall, and we hear now a storm of applause breakout at his appearance. 
Apparently, it is possible to build a life on killing a man.

Stoddard is therefore able to establish in a fashion the community of law, but it is 
not one in which justice is established by people together, mutually ceding to each the 
authority to speak for each other, to have that authority over each other, mutually 
acknowledging that others have the right to speak for ourselves, and that when we speak 
we (must) speak for others (because that’s what it is to speak).

What we get in Shinbone is a world with no inside, a legal order in which no one 
is able to leave us an expression of themselves, in which privacy and society are separate, 
on which the pursuit of happiness is purely private, in which there is no public space in 
which others can be truly acknowledged.

Is there any hope in the film?

It can’t be that we’re supposed to take the “print the legend” slogan as the 
message of the film; that it’s good to believe in our heroes even though the images are 
false and baseless. That’s the expression of the corrupt newsman. It’s the expression of a 
society fated, as modern Shinbone appears to be, to die of nostalgia.
If there’s any hope, it is to be found in the cactus rose on Tom’s coffin – the last thing we see (in close up) in Shinbone – growing out of Tom’s coffin.

On one level the rose represents Hallie’s still-living love for Tom. But I also read it as a demonstration staged by Hallie for Ranse, as a way of drawing him back to the possibility of a true marriage with Hallie (which we are not really given the impression they have now). This entails on his part acknowledging her desire for Tom, which is the acknowledgement of her otherness, the independence of her desires – the only basis on which that community, which is a true marriage, can be based.

Is this seeming retreat from the public world to the private a forlorn gesture? No. This is the most striking and suggestive difference between the Oresteia and MLV. For the Greeks, family and public sphere were utterly separate; one was the world of necessity, the other the world of freedom.

When at the very end, in the train, Ranse, in Fordian fashion, not looking directly at Hallie and speaking very quietly, asks Hallie if she would mind leaving Washington, coming back to live in Shinbone, and “maybe opening a law office.” Hallie’s face lights up and she says, “If you only knew how often I’ve dreamed of it.”

My reading of MLV turns on this, which I just have to ask the reader to accept and see if it helps make sense of the film: When Ranse says, “Let’s open a law office,” he must be heard (and Hallie clearly hears him as saying), “Will you marry me?” (Or
rather more accurately, will you remarry me, will you marry me again.) Practicing law allegorizes marriage, the values of community and to be able to speak for and to each other.

Here I would refer the reader to William Rothman’s “Hollywood Reconsidered: Reflections on the Classical American Cinema” and Stanley Cavell’s Pursuits of Happiness: The Hollywood Comedy of Remarriage (1981) for an argument that in classical Hollywood films of, say, the beginning of the sound era, to the mid-50’s or so, a central if not obsessive topic was the nature of marriage and the relation and nature of equality between the sexes. In particular, Hollywood films, especially romantic comedies and what became known as “women’s films” or “weepies”, but other types of films as well, explored the analogy between marriage and law, marriage and politics. There was one underlying theme: that we could discern in the nature of marriage a true form of equality which could serve as a model for a democratic polity.

Needless to say, this is the absolute reverse idea of the Greek idea of relation of the public and private. Ours stems more from American transcendentalism and its ideas of the overlap of marriage and friendship. As Rothman points out, in the ‘50’s, the audience for classic Hollywood films fragmented and seemed no longer interested in seeing films that dealt seriously with the “transcendental inspirations to become more fully human.” This is beginning to show itself in the more and more common belief in law that there can be no private realm of equality, but only one dominated by power relations. We are returning to the Greeks in our attitudes towards these matters.
The concern of Hollywood films of the ‘30’s and ‘40’s was that marriage was a place where the schools of transcendentalism could be kept alive until society was ready to accept them. The focus of The Man Who Shot Liberty Valance is on the flickering lights that can keep the ideals of community alive. A good marriage is a possible way of keeping alive the ideas of equality and independence Pompey attempted to give voice to in The Man Who Shot Liberty Valance.


2 THE MAN WHO SHOT LIBERTY VALANCE (Paramount 1962). Today, with the widespread availability of VHS and DVD, and the ability to pause, stop, and rewind films very easily, I am going to assume that the reader of this paper can have easy access to the smallest details of THE MAN WHO SHOT LIBERTY VALANCE and thus will be able to follow this paper easily.

3 Aeschylus, Oresteia (Lattimore trans. 1953).


5 See the clear account in Lattimore, “Introduction to Aeschylus I” (1953) 29-31.


7 Werner Jaeger, Paideia (OUP) I, 111. Jaeger gives a nice summary.

8 Id.

9 Pitkin, supra note 6, at 210.

10 Id.

11 Aristotle, Politics 1254 α 21-22 (Bekker pagination).

12 Pitkin, supra n. 6, at 211.
This is hardly an article on Arendt, but briefly for those who are interested: Arendt believed that beginning with the Middle Ages, the political turned into the social, which is a larger form of the family, in the sense that now all communal life is seen as oriented toward production of goods and the survival of the species. In other words, economics was invented. (We see it finally creeping into law.) In society, individuality is not a good, but a bad. Society requires conformism of behavior (Arendt didn’t call it action) to function efficiently. See generally, Arendt, supra note 4, at 22-49. The entire book, of course, is worth reading.

Arendt, supra note 4, at 18-19 (footnotes omitted).


See, among many others, YOU CAN’T TAKE IT WITH YOU (Columbia Pictures 1938); THE PHILADELPHIA STORY (Metro-Goldwyn-Mayer 1940); perhaps most memorably, IT’S A WONDERFUL LIFE (RKO Radio Pictures 1946).

See generally, L. Wittgenstein, Philosophical Investigations (1958); J. L. Austin, Philosophical Papers (3d ed. 1979); S. Cavell, Must We Mean What We Say? (1969); S. Cavell, The Claim of Reason (1979).

Cavell, id., Must We Mean What We Say? at 52.

Cavell, supra note 17, The Claim of Reason at 181.

Cavell, supra note 17, The Claim of Reason at 223.


Cavell, supra note 17, The Claim of Reason at 375.

Cavell, id., at 20.


Pitkin, supra note 6 at 134.

Cavell, supra note 15 at 58.

Cavell, supra note 15 at 59. By “arbitrary,” I take it Cavell means “depending purely on the fact that one man just happens to be faster with a gun than the other.
As does Ranse as he goes out to face what he must feel is his certain death for a principle.

Cavell, supra note 15, at 20.

Cavell, supra note 15, at 58.


Rothman, supra note 32, at 8.