1. INTRODUCTION

Violations of international law and human rights laws are the plague of the twentieth and twenty-first centuries. Man’s inhumanity to man seems to be epidemic, especially as wars proliferate and warriors abandon respect for human rights and the laws of war. Witnessing mass violence and violations of human rights has a powerful and dramatic effect. Writers, filmmakers, artists, philosophers, historians, and legal scholars deeply affected by the horrors of human rights violations occurring all over the world respond by representing them indirectly through the humanities. The hidden meanings and the international law issues embedded in these artistic representations of international human rights violations are the subject of this book.

To delve more deeply into the underlying international human rights laws represented in the humanities, I use an interdisciplinary method based on semiotic theory. Semiotics is the science of signs. When applied, sign theory can effectively unravel the complexities of such controversial issues as terrorism, civil disobedience, women’s human rights, children’s human rights, and the impact of culture on the interpretation of international law. These complex issues are represented indirectly, visually, and dramatically in works of art, film, literature, and the humanities, which I study in detail in this book.

Semiotics is a mysterious term to some but a household word to others, especially Europeans in the fields of art, music, literature, medicine, and now, the law. Sign theory was originally a European phenomenon founded by Ferdinand De Saussure and advanced by Charles Sanders Peirce. Semiotics has developed internationally; it is applied most frequently in the fields of literature and interpretation.

Semiotics is a vast branch of knowledge encompassing many different investigatory fields such as linguistics, philosophy, stylistics, hermeneutics, cultural anthropology, and many others, all involving interpretation. Because law is very definitely about the interpretation of legal discourse, semiotics is a very useful tool to facilitate legal interpretation. Semiotics helps readers go beyond the mere surface of a text. Lawyers; diagnosticians; interpreters of art, music, and dance; doctors examining body signs and symptoms; and judges reading legal documents all use semiotics without knowing it to see between the lines and thereby excavate hidden meanings or obscure but significant phenomena not always visible to the naked eye. Semiotics is to readers what the microscope is to scientists.

Semiotics is also called sign theory. The letters of the word on a page are called the signifiers, and the meanings hidden below the written letters are called the signifieds. The relationship between the signifier and the signified is the
sign itself. Thus, a word is a sign that has both a physical presence on the surface of the text (signifier) and meanings hidden below the text and within the connotations and cultural contexts of the word (signifieds). Semiotics, then, is by definition interdisciplinary and highly dynamic because the reader or legal scholar trying to interpret a text must determine the relationship between the signifier and the signified to derive the latent meanings of the sign. Furthermore, semiotics is interdisciplinary because it is a science built on elements from many different fields of investigative research.

Umberto Eco defined **semiotics** as “the discipline studying everything which can be used in order to lie.” The deception Eco refers to when he speaks of lies is the duplicity implicit in words themselves that, by their very relational nature, are designed to hide some meanings while representing others. We all know that words can say one thing and mean something else. Semiotics allows researchers to excavate hidden meanings and thereby illuminate a literary or legal text.

Because of the vastness of the field and the many areas of knowledge semiotics encompasses, confusion seems to surround the term—and some people even get frightened when they hear the word! Some call it *semiotics* while others call it *semiology* (and may even spell it *semeiology*). Some refer to it as *semiotics* in the plural, or *semiotic* in the singular or as another lexical monstrosity coined *sematology*. This terminological confusion that plagues the field of semiotics is due in part to the breadth of its subject matter and to the subdivision of the field into syntactics, semantics, and pragmatics, to name but a few.

In this book I apply semiotics to illuminate, not obfuscate, the intricacies of international law and international human rights laws as represented in the humanities. Examples of some of the literary and cinematographic works that contain hidden international law issues are Joseph Conrad’s *The Secret Agent* and the movie *Hotel Rwanda* (both representing terrorism); Roman Polanski’s film *The Pianist* (representing State-sponsored terrorism and violations of the laws of war); Martin Luther King’s *Letter from Birmingham Jail* (defining civil disobedience and its link to natural law); Sophocles’ *Antigone* as compared to Anouilh’s more recent *Antigone* (representing civil disobedience and women’s rights in two different cultural milieus and two different periods of time); Azar Nafisi’s memoir, *Reading Lolita in Tehran*; Shirin Ebadi’s memoir, *Iran Awakening*; two powerful documentary films about women and family law in Iran: *Divorce Iranian Style* and *Two Women* (all four focusing on different aspects of the violation of women’s human rights in Iran); Lisa See’s *Snow Flower and the Secret Fan* (representing women’s human rights violations in China); Uzodinnma Iweala’s *Beasts of No Nation* and Ahmadou Kourouma’s *Allah is Not Obliged* (both depicting the life of child soldiers, trafficking of humans, and the violation of children’s human rights in Africa); Arthur Golden’s *Memoirs of a Geisha* (illustrating a case

---

of copyright infringement, defamation, and sex trafficking in Japan), and *Flash of Genius* (a movie about the piracy of patented inventions).

Part A of the book provides an introduction to the relationships between semiotics and the law. Chapter 2 is an in-depth study of semiotics as it is applied to the law. It can be used as a manual of legal semiotics. This chapter explores the basic elements of semiotics, the role sign theory plays in the law, and the potential use of the semiotic method for legal scholars and practitioners. It defines the term *legal semiotics* and traces the history and development of semiotics as it grew out of the varied disciplines of medicine, philosophy, linguistics, anthropology, and literature. This chapter also sketches the basic principles of the sign classification system proposed by Charles Sanders Pierce, whose theories influenced the legal academic community especially in the development of the legal realism movement. Semiotics is the overarching science encompassing linguistics. In this chapter, I discuss the semiotic theories of certain key figures in linguistics such as Ferdinand De Saussure, the father of modern linguistics, including his view of the scope of semiotics and its relation to the development of legal positivist theory. The semiotic theories of Charles Sanders Pierce influenced the legal realists. In the field of cultural anthropology, I look at the work of Claude Levi-Strauss who adopted Saussure’s semiotic principles and developed a structural method used successfully by legal scholars (mainly in Europe). Through the fertile connection of literature and the law, legal scholars have become aware of the potential of semiotics.

Chapter 2 also traces the sources of semiotics in different schools of literary theory ranging from Russian formalism to post-structuralism, including the specific contributions of these literary theories to legal interpretive theory. Roman Jakobson, for example, is a major contributor to semiotics and to communication theory in general, and his work has significant implications for legal interpretive practice. It is interesting to see that the literary schools of new criticism, structuralism, post-structuralism, and deconstructionism have made a mark on American and European legal scholarship, especially in the development of the critical legal studies movement. This chapter will isolate and describe the specific influence of these literary schools on the law and on the critical legal studies movement in particular. I look at the work of three eminent European structuralists (Algirdas Greimas, Tzvetan Todorov, and Roland Barthes) and their influence on legal semiotics in the United States. Semiotics plays a significant role in the “opening up” of the legal text, as discussed by Ronald Dworkin. Similarly, there is a fertile relationship between H.L.A. Hart’s theory on legal positivism and semiotic theory. The interdisciplinary nature of semiotics has promoted much dialogue among researchers from many different areas of knowledge and has helped breathe life into the interpretation of literary and legal texts. This chapter attempts to draw analogies between the structural method of Saussure and the empirical models adopted by the legal positivists, the open-ended semiotic process proposed by Peirce and espoused by the legal realism movement,
and the role that contradiction and demystification play in the deconstructionist and critical legal studies movement. Each of these legal movements has adopted the semiotic theories of Saussure, Peirce, and the post-structuralists respectively.

Once the elements of semiotic theory are exposed, the rest of the book is basically an application of semiotic theory to international law in order to unravel particularly complex and compelling international law issues represented vividly in the humanities.

Part B of the book focuses on the very controversial question of a definition of terrorism, which very few of our most learned international law scholars are willing to provide. In the U.N. debate about the definition of terrorism, the West has been worried that any proposed definition could be used to include State-sponsored terrorism, while the Third World has been worried that a definition which emphasizes non-State actors might fail to differentiate between terrorism per se and the struggle for national liberation. As a result of this interesting dialogue, there remains no real definition of terrorism to guide us in a world that fears terrorists.

Chapter 3 proposes a definition of terrorism based on semiotic principles. Terrorism must be deconstructed to distinguish between domestic and international terrorism, State-sponsored terrorism and non-State-sponsored terrorism, and terrorism per se and revolutionary violence that arguably falls afool of the laws of war. The basic problem in the quest for a definition of terrorism is the lack of a single criterion determining the fundamental component elements of the term. Semiotics enables us to uncover the basic structural elements of terrorism.

One obstacle to arriving at a universally accepted definition of the word is the need to resolve its underlying paradoxes and conflicting political and ideological premises. Is terrorism legitimate if it is perpetrated in self-defense or in an attempt to achieve self-determination? This chapter will uncover five basic elements of the crime of terrorism. Under certain circumstances terrorism can be included in other specifically defined international crimes such as war crimes, crimes against humanity, and genocide. Chapter 3 looks comparatively at definitions of terrorism provided by the United States, England, France, the European Union, Canada, and the United Nations. Terrorism is conceived of by some as a crime, by others as a method, and by still others as an act of war. The paradoxical nature of terrorism complicates the establishment of a universally accepted definition of the term. A brief analysis of the book The Secret Agent by Joseph Conrad and the more recent movie Hotel Rwanda (depicting the despicable acts of terrorism that preceded the genocide in Rwanda) dramatically illustrate the complexities of defining terrorism.

Despite the definitional difficulties, there is no justification for terrorism. It is not defensible to argue that terrorism needs to be viewed from a political context and that the motivation of the actor and the sociological and cultural contexts in
which the act occurs must be taken into consideration. Such a relativistic approach would legitimize terrorist acts via the claim that the end justifies the means. This simply does not comport with generally accepted principles of the rule of law.

Chapter 4 looks more closely at State-sponsored terrorism by analyzing The Pianist, a film directed by Roman Polanski based on a book by Wladyslaw Szpilman. This chapter decodes the legal principles of international humanitarian law illustrated dramatically in the narrative and cinematic representations of the life of a famous Polish pianist who recounts in his memoirs his horrifying experience in and out of the Warsaw Ghetto. Both the book and the movie shed light on the lack of effectiveness of unenforced international laws of war and international human rights laws in our global society. The chapter summarizes the personal history of Szpilman’s ordeal; the historical basis for the Warsaw Ghetto uprising; the manner in which the film and book depict international humanitarian laws and international human rights laws being flagrantly violated by the Nazis during the Warsaw occupation, the Warsaw Ghetto, and the Warsaw uprisings; and the differences between the book and the film. This chapter examines the special role of music in the book and film and the role that art can play during catastrophic events to prevent further atrocities, assuage victims of horrific events, inspire the collective conscience of perpetrators, and protect victims from the reality of pain caused by war and the failure to enforce international laws of armed combat. Art can distance the victims from the reality of pain caused by the war and the violation of international laws of armed combat and human rights.

But can art offer a form of self-help remedy to the victims of massive violence and atrocities without offering retribution to the perpetrator or revenge to the victim? What is the power of art to transcend the ugliness and brutality of war, especially if the combatants and other actors refuse to play by the internationally accepted rules of war? Recognizing through past experience that art cannot prevent atrocities, this chapter reexamines art’s power of effective communication, education, and edification. Is the widespread dissemination of information through artistic media about wartime brutality and futility able to constitute a long-term preventive or palliative measure against the further commission of genocide, war crimes, and human rights violations? International human rights violations and war crimes are being committed today; they are increasing in number and degree of atrocity despite the peace-loving nature of our global society. These crimes may be reduced by the interplay of traditional retributive justice and a newly proposed restorative justice. However, the international community should not treat the perpetrators with impunity. Instead, a new form of restorative justice is discussed that may not focus on retribution, but rather emphasizes the personhood of the victim through language and expression.

Part C of this book examines the subtle relationship between civil disobedience and terrorism. Chapter 5 provides a semiotic definition of the term civil disobedience,
which like the term terrorism has been misapplied in recent years. The chapter reviews the history of civil disobedience in the United States and how it grew out of resistance and revolution. Basic tensions exist between the rights of resistance and national security and the origins of a constitutional protection of resistance. After the Revolutionary War, American leaders sought to dampen the prevailing “spirit of resistance” by giving the national government the power to suppress unlawful resistance.

The term civil disobedience is built on an oxymoron that reflects its positive and negative aspects. Some will even say that “civil disobedience” is semantically inaccurate because disobedience to the law cannot be “civil”! Civil disobedience is not the use of violence to compel the government to grant autonomy to a specific group. That is rebellion or revolution, with the aim of rebels seeking change by destroying the system. In contrast, Martin Luther King and other civil disobedients sought reform within the established order. The oxymoron reflects a basic duality in the term civil disobedience that denotes both obedience and disobedience of the law. Gandhi was a great proponent of violating laws in order to publicize a protest and bring pressure on the public or the government to accomplish purposes that had little to do with the law being breached.

Generally speaking, an act of civil disobedience must be nonviolent, open and visible, illegal, and performed for a moral purpose to protest an unjust law or to object to the status quo; it must also be done with the expectation of receiving punishment. Thus, there are both positive and negative connotations of the term civil disobedience, which is often associated with the term terrorism. But civil disobedience is clearly not terrorism although there are certain similarities between the two concepts. Both are associated with anarchy and chaos. Both are about protest. Terrorists and civil disobedients both have an overarching cause that they want to publicize by their symbolic acts. Terrorists and civil disobedients are both sometimes viewed as heroes. But unlike civil disobedience, terrorism works on the principle of fear.

The U.S. Constitution probably will not, and should not, protect nonviolent civil disobedience by exempting it from punishment because that would undermine the respect for the rule of law and erode the effectiveness of the very act of civil disobedience itself. The U.S. Constitution seeks to accommodate two conflicting values: (1) the need for the right to speak freely, to protest effectively, to organize, and to demonstrate; and (2) the need to maintain order so that other people’s rights and the peace and security of the State will not be impaired. The State is obligated constitutionally to protect protestors who march peaceably as in the famous Selma march. However, civil disobedience (which is the act of breaking the law) is not protected by the constitutional right to dissent or right to free speech. The use of impermissible means of dissent is an act of civil disobedience done intentionally and for moral purposes, and the disobedient expects to be punished for the unlawful act irrespective of any noble motivation. Similarly, there are limitations on the right to free speech. Good motives do not
excuse speech acts or actions that will injure some and diminish the rights of others.

In Chapter 6, the book delves more deeply into Martin Luther King’s views on civil disobedience as expressed in the memorable Letter from Birmingham Jail. This text is one of the classics in the literature of civil disobedience along with Sophocles’ Antigone, Thoreau’s Walden and Civil Disobedience, Gandhi’s writings, and Jean Anouilh’s Antigone. King wrote this Letter on the margins of a newspaper from his prison cell after he was jailed on April 12, 1963. He was arrested for failing to obtain a parade permit from the Birmingham city commission and for disobeying a court order forbidding civil rights leaders from taking part in or encouraging demonstrations. The Letter ranks high among masterpieces of prison literature, like the philosophy of Gramsci and the poems of Verlaine. The Letter is a call to arms without violence, a plea for freedom, and a cry for communal brotherhood. King proclaims that man’s failure to disobey an unjust law is as evil as resisting justice. These words rang true during the Nuremberg trials with the Nuremberg court holding that a soldier or officer is individually responsible for committing crimes during wartime, even if these crimes were ordered by a superior.

In this chapter I decode the Letter to penetrate the surface of the text and excavate its many rich and hidden allusions to important legal issues. King’s readers are initially eight white moderate clergymen of different religious backgrounds. King’s readership expands to include the public at large and anyone concerned about human rights. The Letter is an apology for the values of the Christian religion. King’s Letter is designed to disturb, and it does so by engaging in linguistic gymnastics and by depolarizing obvious oppositions. The Letter resembles a legal brief where King presents arguments convincingly for and against immediate nonviolent direct action in order to protest racial discrimination and to enforce the right of equality. But unlike a good brief, King’s Letter is contradictory and ambiguous—and purposely so. The semantic and stylistic dissonance he creates with words is designed to wrench conservative white moderates out of their political and legal indifference.

The Letter has biblical underpinnings, especially related to Martin Luther King’s anti-law stance. King’s Letter is also full of literary and philosophical references to Plato’s Allegory of the Cave, Socrates, and Sophocles. King believes the eternal law and natural law will be fulfilled only when sinful separation of human beings in the act of segregation finally ends.

King’s views on civil disobedience are complex and contradictory. Parts of his theory resemble the conservative views of Robert H. Bork while others resemble the more radical views of Ronald Dworkin. Basically, a close reading of the Letter reveals that King was ahead of his time. He replaced the conservative evangelical conception of a fundamentally evil human nature with the view of man as fundamentally good. He synthesized opposites and embraced a Christian existentialism advocating individual nonviolent direct action and a struggle for the goal of community.
Chapter 7 continues the theme of civil disobedience as represented in the play *Antigone* written by Sophocles in Athens in fifth century B.C. as compared to the more modern rendition by Jean Anouilh, which was written during the Nazi occupation of Paris. The character Antigone is the symbol of civil disobedience. She is the inspiration of resistance movements against tyranny and probably one of the first feminists who heroically resisted against the oppression of women and unjust laws. The study of this play in Chapter 7 reveals the differences between natural law and legal positivism as well as the effectiveness of civil disobedience for legal reform. The study focuses on the connection between civil disobedience, jurisprudence, and feminism in ancient and modern comparative legal systems as viewed from a postmodernist perspective.

The critics of natural law led the way toward the development of legal positivism. *Antigone* was the philosopher Hegel’s favorite Greek drama; Hegel saw in the main character the representation of obedience to a higher order. Hegel’s particular reading of Sophocles’ *Antigone* focuses on the legality of Creon’s harsh decrees that may be justified in order to preserve the authority of the State and the sanctity of its laws. Hegel was a statist who believed in preserving the *polis*, but he still extolled the virtues of the heroine Antigone, calling her the “noblest of figures that ever appeared on earth.” For Hegel, Antigone’s act of defiance was based not on personal desire, but on a belief that she had a higher duty to bury her brother. Burial of a family member was her God-given right that conflicted with Creon’s law banning it. Antigone defies Creon’s law and willingly accepts her cruel punishment to be buried alive in a cave with only enough food to prolong her agony. Creon stands for the principles of law and order, allegiance to the public order and to the State, and the superiority of men over women in a universe governed by gender difference.

Jean Anouilh was a French playwright known for his rebellious spirit. Anouilh’s *Antigone* is based on but differs very much from Sophocles’ Greek tragedy, which Anouilh knew by heart. Anouilh’s play reflects the horrific events of World War II. He expressed his views cautiously because he lived in an atmosphere of censorship and repression. He participated in the theatre of revolt and expressed his ideas through the medium of the absurd. The play was performed in 1944 in German-occupied France. Existential philosophy was in the air, which is reflected in this play’s tragic and comic tense interplay. Anouilh’s play is a parody that attacks vice and folly by the use of satire and irony to mask the author’s subversive message. The playwright is a French postmodernist who debunks the virtues of the tragic heroine, calls into question tragedy itself, and raises serious doubts about the effectiveness of civil disobedience for legal reform. Nevertheless, by Anouilh’s recreation of the classical Greek tragedy, the modern play allowed the public at large in war-torn Europe to rethink the underlying issues of civil disobedience and its ability to influence real change in the French legal system that was intricately connected to its political environment.
Part D of the book focuses more on comparative women’s human rights: women’s right to freedom of speech, freedom of association, freedom to control their own bodies, and freedom from slavery. Women in many Middle Eastern countries are being denied the right to wear their clothing of choice, and Muslim women in Europe and Turkey are being forced to remove their headscarf (worn for religious reasons) in public institutions such as elementary schools and medical schools. Women in Iran have had their human rights systematically curtailed since the fall of the Shah in 1979. Women in China are discriminated against and subject to serious injury due to the one-child policy that has given rise to infanticide of girl babies and the trafficking of women into China.

Chapter 8 looks at the contradictory and paradoxical status of women’s human rights in Iran today. The Iranian society and language reflect this paradox because words reportedly have double meanings that produce vagueness and intentional ambiguity, resulting in misunderstandings for some and advantages for others engaged in the fine art of hiding what they really mean to say. This linguistic deception is not unusual, especially for Iranian women who must behave one way publicly and another privately, even though society in the Islamist State has been forced to adopt a universalist moral code that militates against relativist ethics.

Human rights abuses are prevalent in Iran today with women suffering the most from this deplorable condition. The following serious human rights abuses exist in Iran and detrimentally impact women: summary executions; disappearances; widespread use of torture and other degrading treatment including rape; severe punishments including stoning to death and public flogging; harsh prison conditions; arbitrary arrests and detention; prolonged and incommunicado detention; impunity of government officials accused of misconduct in judicial proceedings; influence of conservative government clerics in the judiciary preventing citizens from due process or fair trials; governmental restriction of the freedom of religion; flagrant discrimination against religious minorities; governmental control over the selection of candidates for elections; governmental restriction of the work of human rights groups in Iran; domestic and public violence against women; increase in women and children runaways, prostitution and sex trafficking; and increased poverty in Iran where 29 percent of the families below the poverty line are single mothers.

Women’s human rights and the role of women in Iranian society are tied up in a thick web of historical, political, cultural, economic, social, and legal factors, all of which work together in an intricate contextual system resembling a structural puzzle whose parts or elements can be identified and analyzed. Each of these elements is itself a sign system with complex underlying mechanisms. Each sign system plays a significant role in the development and continuation of human rights abuses of women in Iran. Classical structural analysis provides insights into surface and deep meanings. Semiotic analysis studies the signs of women’s human rights that can reveal hidden, deeper structures unknown even
to the women themselves. This semiotic study will examine various types of coded sign systems that, when decoded and interpreted contextually, reveal hidden realities about women’s human rights in Iran. The analyst will attempt to determine how and to what extent basic human rights are being denied to women in Iran today and whether there is hope for more justice and gender equality in Iran in the future.

The first part of this study examines the historic and political contexts of women’s human rights in Iran and the sign system of wearing women’s Islamic garb known as the *hejab* or veil so as to uncover the meaning of the many different messages this act conveys. I discuss the significance of the French headscarf case and the Turkish headscarf case decided finally in the European Court of Human Rights. That court, based on pure semiotics, and in an almost unanimous decision denied women the right to wear a headscarf in public schools and universities.

Chapter 8 investigates various cultural manifestations of women’s human rights abuses in Iran by studying the memoirs and films of four Iranian women. Azar Nafisi’s best-selling memoir, *Reading Lolita in Tehran*, was written by an Iranian woman who is a literature professor who lived in Iran both before and after the Shah’s fall. The second memoir is *Iran Awakening*, written by Shirin Ebadi, a Nobel Peace Prize winner and former Iranian female judge, who is currently a lawyer and a women’s rights activist working within the Iranian system to change it. The powerful documentary film *Divorce Iranian Style* sheds light on the institution of marriage in Iran and the deficiencies of its family laws and legal system, especially for women seeking a divorce. The popular Iranian film *Two Women* juxtaposes one modern woman (allowed by her “liberal” husband to flourish in Iranian society) against another woman who is virtually enslaved by a tyrannical husband who denies her even the most basic human rights of freedom of movement. This film represents the paradoxes in Iranian society today. These contradictions and blatant human rights violations have resulted in a series of protests by the people of Iran who fear the abuse of power by the Guardian Council and the conservative clerics.

This chapter also investigates the Iranian family laws as a sign system that reflects the culture in Iran and the status of women’s rights today in that country. The inadequacies of the Iranian legal system, which is caught up in a difficult relationship with Islam and with differing views of Koranic interpretation, negatively impact women. This chapter also examines some of the international human rights laws and instruments that, if enforced, do protect gender equality. Finally, this chapter will try to look at the future of women’s rights in Iran.

Chapter 9 reveals a demographic crisis that rises to the level of *gendercide* in China where women are bought and sold, murdered, and made to disappear to comply with a governmental policy that coincides with a cultural phenomenon of male-child preference. To comply with the One-Child Policy instituted in 1979 and to ensure that the family has a coveted boy child, millions of people in China
have committed sex-selective abortions, infanticide of their own baby girls, non-
registration of the first or second infant in the family, and abandonment or sale
of their own girls. Government officials have instituted forced abortions, forced
sterilizations, and financial penalties for noncompliance with the One-Child
Policy. There are more than one hundred million missing women in China
today. Infant murder is caused by parents who want a son or by obstetricians
who kill unauthorized babies by injection, strangulation, and other inhumane
practices. Although these practices are illegal, successful prosecutions and sen-
tencing of these perpetrators are rare. Accordingly, women are disappearing
because of the social pressures of male-child preference, the zealous enforce-
ment of the One-Child Policy by local government authorities, and the murder-
ous responses to this policy undertaken by millions of ordinary parents in China
who are desperate to have a son. The scarcity of women in China has produced
a gender imbalance and an increase in prostitution and human trafficking. The
traffic of women has many forms in China: the purchase of women for brides,
the abduction and/or purchase of a male son, and the sale of unwanted female
children.

Human trafficking is one of the most profitable big businesses in the world;
it earns more than $7 billion annually. Trafficking is the purchase and sale of
human beings for the purpose of exploitation of forced labor, such as sex work or
participation in armed conflict. The trafficking of women and children in and to
China is one of China’s most serious human rights violations. The prevalence of
sex trafficking in China and the disappearance of Chinese women are due to a
deeply ingrained culture of women’s inferiority that is reflected in Confucius’
Five Classics. Lisa See’s wonderful book, Snow Flower and the Secret Fan, vividly
represents the plight of women in China in the nineteenth century, including
the horrors and pains of forced foot binding that crippled women, and the utter
isolation of the typical Chinese woman brought up in a patriarchal society.

Despite many international instruments regulating trafficking, and even
Chinese domestic anti-trafficking laws, the business of sex trafficking and
human trafficking is on the rise in China. Even the powerful American anti-
trafficking law that has an international prong and extraterritorial reach cannot
control the chronic discrimination against women in China and the develop-
ment of its human trafficking industry. Corrupt local officials participate and
exploit women through trafficking and prostitution, thus making it difficult to
combat the trafficking industry there. This chapter discusses the interconnec-
tion of historic, legal, and cultural contexts resulting in the continued discrimi-
nation against women in Chinese society, including the increase in trafficking
and the concomitant deplorable human rights violations committed in China.

Part E focuses on children’s rights and the relationship between women and
children. There is a serious need to protect children from the abuse and human
rights violations now occurring all over the world. Children are forced to work
in slave-like conditions because of poverty, greed, and the general devaluing of
children in certain cultures. Human rights violations of children are exacerbated during wartime conditions, especially with the recent development of the practice of brutally forcing children to fight as soldiers. Child soldiering is a form of trafficking, a deplorable human rights violation, an international crime, and a contemporary form of slavery.

Chapter 10 focuses on the development of a culture of violence in many parts of the world, especially Africa, which has given rise to genocide, mass violence, and child soldiering. As described above, child soldiering is a variant of human trafficking that is one of the worst human rights violations as it rises to the level of slavery (a universal crime). The recruitment of a child (a person under age eighteen) for the purpose of participation in armed conflict is considered trafficking in persons.

Although child participation in armed conflict is not new, child soldiering today is a widespread phenomenon, prevalent particularly in developing countries where political, economic, and social instability are more commonplace and where approximately half the population consists of children. In 2000, it was estimated that thirteen million children were displaced as a result of warring conflicts all over the world. During the civil war in Sierra Leone, more than one million children were displaced, and twenty-five thousand children (some as young as eight) were abducted and forced to become members of armed groups. Currently, over three hundred thousand children are serving as child soldiers in fifty countries in every region of the world. These children are subjected daily to dehumanizing atrocities.

Children who are trafficked into child soldiering—girls as well as boys—are often abducted from their homes, tortured, brutally indoctrinated, forced to become intoxicated with mind-altering drugs, threatened with death or dismemberment if they do not fight, forced to return to their homes to witness or participate in the death or disfigurement of their own family members, required to kill friends who do not obey their commanders, and forced to watch the punishment of other child soldiers who attempt to escape. Some children who tried to escape have reportedly been boiled alive, and other child soldiers have been forced to eat the human flesh as part of their training. Girls are often raped, enslaved, and victimized by sexual violence on a daily basis. These children are drugged to make them fearless, empowered with small weapons, and indoctrinated brutally to commit atrocities.

Despite a proliferation of international human rights treaties, labor laws, and humanitarian laws that should provide children with special protection from this heinous form of abuse, the trafficking of children and their use as soldiers are increasing. Chapter 10 examines the relationship between human trafficking, slavery, and child soldiering, and analyzes the root causes of child soldiering. The international and domestic laws designed to protect children from this kind of abuse are also analyzed. Finally, this chapter examines two literary representations of child soldiering (Iweala’s Beasts of No Nation and Kourouma’s
Allah is Not Obliged) and the significant insights such representations can provide to the international community. I also propose some cultural and economic solutions to the global failure to implement the many legal instruments that should protect children from being abducted and used as child soldiers.

Part F studies the intricate relationship between semiotics and culture. Semiotics involves the decoding of cultural signs. Umberto Eco referred to semiotics as a “substitute for cultural anthropology.” Signs exist in society, and each society has its own culture. Moreover, culture is one of the contexts that impacts the interpretation of texts. Sometimes we read, interpret, and understand laws, treaties, and texts in accordance with our own cultural traditions. If we are asked to interpret a foreign or ancient law or text, it is necessary to understand the cultural context in which this law is framed.

Chapter 11 delves into the Japanese culture, the Japanese people, and their views on copyright infringement, defamation, and sex trafficking as represented in the memoirs of a fictional geisha. This chapter delves into the geisha tradition, which is clearly a significant part of the Japanese culture and history. In it I explore some of the legal issues embedded in Arthur Golden’s Memoirs of a Geisha. The geisha tradition has been alternately glorified by Japanese society and outlawed by Japanese law as a form of prostitution. The duality of the geisha as both artisan and courtesan is a leitmotif of Golden’s famous and beautifully written novel. At its worst, the geisha tradition involves force, fraud, and deception, and the horrifying practice of selling one’s own children into slavery for purposes of sexual exploitation.

In striving for historical accuracy, Golden obtained an intimate interview with a real geisha named Mineko Iwasaki, who consented to reveal to him valuable secrets about the closed geisha society. Using her narrative as source material, Golden wrote a fictional biography of a little girl named Chiyo-chan who is sold by her own father at the age of nine into debt bondage. Like many Japanese girls sold by their parents into forced prostitution and slavery, Chiyo-chan endures a harsh indoctrination and eventually becomes a famous geisha known as Nitta Sayuri. The essence of the novel is the transformation of Chiyo-chan into Nitta Sayuri.

The poetic, fairy-tale quality of Golden’s prose and his unusual narrative style made the novel a literary and financial success upon its publication in 1997. In 2001, however, Mineko Iwasaki shocked the literary world by filing a lawsuit against Golden and his publishers in New York under Japanese and New York law, claiming breach of contract, quantum meruit, copyright infringement, unjust enrichment, defamation of character, and violation of her rights to privacy and publicity. It seems that Iwasaki became outraged by the discrepancies between her own life and that of Golden’s purportedly fictional geisha. This chapter asks—and seeks to answer—two questions: First, is the geisha tradition as described by Golden a variant of sex trafficking and sexual slavery, which, despite possible cultural justifications, should be abolished by law? Second, did Iwasaki’s lawsuit have any merit?
To answer these questions, I proceed in accordance with structuralist and post-structuralist literary critical methods by looking first at the text itself and then its context, subtext, and post-text in order to explain the plaintiff’s pre-text for suing. I analyze the narrative structures and style of the text; the legal and historic context of the novel (i.e., Japanese laws on prostitution and on protection of the geisha); the legal issues hidden in the subtext, which include sex trafficking, feminist legal theory, and the role of cultural relativism as a justification for the geisha tradition; the post-text, which are the merits (if any) of Iwasaki’s legal claims in the Complaint she filed four years after the publication of the fictional biography; and finally, the big issue, the pre-text, or why the real geisha sued Golden and his publishers for copyright infringement. In view of the famous Hemingway copyright case involving taped interviews, the geisha had very little chance of success in her suit.

Chapter 12 addresses the impact of culture on the semiotics of treaty interpretation. Using hermeneutics, semiotics, and reader-response theory, I look closely at how the Chinese read and misread the Berne Convention to explain why they pirate intellectual property.

Yuri Lotman was the great Russian formalist who understood the importance of culture and its relationship to semiotics. He tried to define a typology of cultures across time, understanding that there is a multiplicity of codes in any given culture, as well as a multiplicity of valid interpretations. He led the way to an acceptance of a multiplicity of interpretations based on cultural differences and codes.

China’s rampant piracy of American intellectual property costs the United States billions of dollars a year. The causes and effects of intellectual property piracy are intricately connected to—and affected by—many factors, including the economy of the country in which the piracy is committed, the political history and ideology of the pirating nation, the culture of the people engaged in the piracy, and the adequacy of the legal system to enforce domestic and international intellectual property laws. I examine the effect of these interrelated factors on China’s interpretation of the Berne Convention, an international treaty designed to protect intellectual property rights of authors and artists. A nation’s possible responses to an international treaty include its recognition of and decision to adhere to the treaty, its implementation of domestic laws in compliance with the international treaty, and its success or failure to enforce these domestic and international laws. These responses are also signs indicating the manner in which a nation reads, interprets, and possibly misreads the legal discourse of an international treaty.

The average Chinese reader understands the Berne Convention against a backdrop of communist ideology that overdetermines their interpretation of the Berne Convention. The ownership of private property and of intellectual property are contrary to the fundamental principles of communist ideology in which the State owns property. Chinese readers read the treaty in its own idiom and
interpret the legal discourse of the Berne Convention in a manner inconsistent with the spirit and intent of the treaty.

In this chapter, I review the history and development of intellectual property protection; the advantages and disadvantages of protecting creative works, inventions, and names; the history of American piracy of intellectual property (including explaining why the United States did not sign the Berne Convention for 103 years after it was enacted); the history of copyright law itself, and different copyright theories associated with the Berne Convention (natural rights, economic rights, moral rights, agency, privacy, personality rights, and market theories).

Finally, I uncover the clashes of culture, explaining the difference between the Chinese and American interpretation of and responses to the Berne Convention. These responses enable us to analyze how the United States reads the Berne Convention and why the Chinese read it differently. A study of the Chinese Authorship Right Law and its terminology sheds light on the Chinese understanding of the basic concept of copyright. The Chinese Computer Software Protection Regulations appear to address every mode of piratical activity, but for various reasons which I discuss, as well as the cultural and political overdetermination of this law that implicitly places power in the hands of State agencies, this law has failed to protect against piracy of computer software.

The Chinese perception of copyright protection is summed up in an ancient Chinese proverb: “To steal a book is an elegant offense.” This metaphoric oxymoron crystallizes the concept that the Chinese read and interpret the Berne Convention in their own idiom and in accordance with their own cultural traditions. Unfortunately, this behavior results in the loss of millions of dollars to businesspeople dealing with the sale of goods in China.

I predict that the Chinese will stop pirating when they develop their own intellectual property and start to fear the piracy of their own protected works. This is happening already, as China’s patent office now leads the world in patent applications, more than eight hundred thousand of which were filed in 2008. Chinese firms are increasingly filing invention patents that are rigorously scrutinized and receive twenty years of protection (as in the West). This year Chinese companies are going to surpass foreign ones in receiving invention patents in China. The rush for patent protection by the Chinese in China has resulted in an increase in disputes. “Since 2006 more patent lawsuits have been filed in China than anywhere else, even litigious America.” The Chinese are also seeking patents abroad. This is a sign that China plans to protect its own technology, especially when China exports it to developed countries. It is common knowledge that countries developing intellectual property eventually enforce laws protecting it as well. Therefore, I believe that as China continues to develop its own

---

2. Chinese Companies are Enforcing Patents against Foreign Firms, The Economist 68 (2009).
3. Id.
intellectual property, China’s piracy will decrease, as did the piracy of European works and inventions by the United States once the United States joined the Berne Convention and needed protection of its own intellectual property.

The film, *Flash of Genius*, uncovers the pain and suffering of an American inventor who patents his windshield wiper invention and then experiences the piracy of his invention by a big American manufacturing car company whom he seeks successfully to sue on principle alone. His ordeal lasts more than ten years, but he wins in the end. The film seems to point in the direction of an implicit adoption by the United States of moral rights principles and a return to the European doctrine of the romantic author or the mad scientist whose ambitious and noble endeavors need incentivization and recognition as well as financial remuneration. The legal community needs to engage in continued efforts to educate the people in foreign countries and in our own country about international intellectual property laws and to enforce the laws in order to realign deep-rooted cultural practices that determine a nation’s interpretation of—and responses to—a widely accepted international treaty such as the Berne Convention.