2004

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Law in Popular Culture

RICHARD K. SHERWIN

A culture may be defined by the hold it has on us, how it holds us together in association.
(John Rajchman, Le Savoir-Faire Avec L’Inconscient: Ethique et psychanalyse)

INTRODUCTION: WHAT IS POPULAR LEGAL STUDIES?

Law embodies forms of communication, commemoration, and advocacy with a singular institutional authority: its meanings are backed by the power of the state. But law’s power, like its meanings, is all over: not only in formal venues, such as courtrooms, legislatures, and government agencies, but also in everyday social practices (Sarat, 1990). People absorb a broad array of stories and images about the law, lawyers, and the legal system from books, newspapers, television news programs, documentaries, docudramas, and feature films. We carry these stories and images in our heads wherever we go, including voting booths and jury rooms, where legal meanings—popular, formal, and mixtures of the two—take effect.

There is a two-way traffic between law and popular culture. Real legal issues and controversies give rise to popular legal representations just as popular legal representations help to inform and shape real legal issues and case outcomes (Sherwin, 2000). Dramatic reenactments of notorious trials reach the screen at breakneck speed. Consider the case of Erik and Lyle Menendez. Two major docudramas about the case were produced, including reenactments of the crime, while the brothers were still on trial for the murder of their parents. Both movies aired after an initial mistrial, and prior to the brothers’ second jury trial. Cognizant of the impact that the docudramas might have on prospective jurors, defense lawyer Leslie Abramson threatened to air a live interview with Erik Menendez on a competing network directly opposite one documentary’s broadcast unless the producers incorporated details more favorable to the defense. As Lisa Scottoline has written, “the wall between fiction and reality has become porous as a cell membrane. With reality passing through it to fiction, and fiction flowing back... into reality” (Scottoline, 2000: 656). Consider actress Julia Roberts’s portrayal of Erin Brockovich, fierce champion of small-town victims of the toxic effects of polluted ground water in a tort suit against a greedy and indifferent corporate defendant. No sooner is the film breaking records at the box office than the real Erin Brockovich shows up in
television ads seeking to defeat corporate sponsored tort reform proposals that would place limits on tort damages.

But the blurring of Hollywood fictions and legal reality is occurring not only in movie theaters and on TV screens at home. It is also taking place inside the courtroom. Consider the prosecutors in real homicide cases who compare the accused to film characters from Francis Ford Coppola's *The Godfather* or Oliver Stone's *Natural Born Killers*. Or the state's attorney who establishes a "knowing and voluntary" waiver of *Miranda* rights based on the defendant's familiarity with a popular TV show (Kemple, 1995).

Of course, in one sense, the intermingling of truth and fiction in legal discourse is nothing new. To paraphrase contemporary American novelist Don DeLillo, law cases, like novels and theater, are all about reliving things. Lawyers are storytellers, and the best, most compelling stories are the ones that adapt familiar narrative forms featuring recognizable character types driven by ordinary feelings, motives, and desires. Advocates who can integrate their case theory into an effective story form, and play it out in court within evidentiary constraints, consistent with the applicable law, are more likely to be persuasive before a jury than those who merely present facts and recite black letter rules. The crime and the motive, the negligent act and the pain and suffering that it allegedly caused, the broken promise and the lost profits that resulted - none of these things exists, as a matter of law, unless and until they have been proven, which is to say, until the decision maker, whether judge or juror, believes them to be so. To succeed in this effort reliance upon the strength of deductive and inductive logic alone will not do. Stories must be told, characters evoked, states of mind laid bare. And that requires the fictional method, the imaginary ground plot, the apt image - fruits of the advocate's facility with the raw materials out of which meanings are made, and made to stick in the decision maker's mind. In short, it requires familiarity with the resources of popular culture.

An important part of the advocate's craft, therefore, is to be able to identify, as well as present, the best available story under the circumstances. Perhaps it will be a clue-building whodunit, like the one prosecutor Marcia Clark told during her summation in the O.J. Simpson double murder trial. As she rattled off each clue, there on a looming screen jurors saw yet another fragment of Simpson's face click into place: his opportunity to kill (click), his motive (click), the victim's blood on his socks and glove (click), the blood trail that he left at the scene (click). Until there it is: the familiar face of O.J. Simpson. The mystery has been solved. Or perhaps the sober, logical rhetoric of the state's detective story will yield to a more animated telling. Perhaps the story will become a hero's tale in which systemic racism and abuse of power will have to be resisted by an impassioned jury. This was the narrative strategy of Johnnie Cochran in defense of O.J. Simpson. Cochran launched the jurors on a heroic quest against "genocidal racism." "If you don't stop it [i.e., the state's cover-up] then who? Do you think the police department is going to do it? ... You police the police through your verdict," he proclaimed. Or it might be a transcendent narrative, a mythic tale of the founding of the American polity, like the story told by defense lawyer Gerry Spence. Spence cast jurors along with his client Randy Weaver as heroic defenders of Jeffersonian liberty against the tyranny of the state in a case arising from the shooting of a federal marshal who came onto Weaver's property to arrest him for illegally manufacturing and selling a firearm. "Go back to 1775 and the Continental Congress," Spence told the jurors, "Jefferson was there, Adams was there ... They were just local guys doing their job, like you are
local people doing your job . . . and they did something permanent and magnificent and lasting, and that is what you will do with your verdict" (Sherwin, 2000: 57). Popular conceptions, categories, emotions, and beliefs about law, truth, and justice enter into the legal system in a variety of ways. They enter the law when jurors substitute their own commonsense beliefs for confusing rules of law quickly read by judges in jury instructions that go beyond the ordinary lay person’s ability to absorb (Smith, 1991). Popular legal representations also enter the law when the mass media obsessively stoke a community’s desire for revenge, as occurred in 1994, when Californians, incensed by the sexual abuse and murder of 12-year-old Polly Klaas, voted in favor of the nation’s toughest mandatory sentencing rules, subsequently known as the “three-strikes-and-you’re-out law. Law may even change as the result of a film, like The Thin Blue Line, Errol Morris’s so-called “documentary” exposé of the frame-up of an innocent man on death row in a real capital murder case. As the judge, lawyers, eyewitnesses, defendant, and defendant’s companion at the time of the murder speak in turn before Morris’s camera their prejudices, lies, and pathologies come into view. The film’s indictment of the way in which the defendant’s conviction and sentence to death in the electric chair were obtained was so compelling that it prompted a review of the case. That review led to the condemned man’s release from prison. The fact that Morris’s “documentary” used actors to stage dramatic reenactments of key events, or that Morris incorporated visual overlays from grade “B” detective dramas to critically or humorously comment on a particular witness’s testimony, all backed by Philip Glass’s hypnotic score, seem to have gone unnoticed, in deference to the filmmaker’s self-professed search for the truth (Sherwin, 1994: 53, n. 52).

In the age of images, legal reality can no longer be properly understood, or assessed, apart from what appears on the screen. The visual mass media, especially television, have become the major source of worldly knowledge and common sense (Pfau, Mullen, Deidrich, and Garrow, 1995). To paraphrase Robert Ferguson (1994: 40), we can only tell the stories we know – and know how to tell within the parameters of a given medium. As Marshall McLuhan famously put it in 1964, “the medium is the message” (McLuhan, 1994). The advent of television in particular has changed the way journalism and politics are practiced. From Ronald Reagan’s classic campaign film “A New Beginning” in 1984, to Bill Clinton’s 1992 campaign feature “A Man from Hope,” politics, like journalism, has gone visual. The visual mass media today – from film to TV to the Internet – are similarly changing the practice and consumption of law.

Today, electronic monitors pervade modern American courtrooms. On the screen jurors and judges watch video depositions, distant witnesses, day-in-the-life videos documenting personal injuries, as well as all manner of evidentiary exhibits – from projected images of physical and documentary evidence, to computerized graphics, digital animations, and simulated crimes and accidents. Jurors even watch movies made for closing argument (Standard Chartered PLC, 1989). And, of course, people watch at home, sometimes obsessively. At such times the extraordinary case, like the double murder trial of O.J. Simpson, acquires an amplified cultural significance. Larger social issues, like race and the cult of celebrity, unfurl on a national, even global, stage. In the aftermath, laws change and new policies develop. And here, too, the medium matters. The notoriety of a trial has only partly to do with the legal issues that it raises. Its popularity also depends on the extent to which the trial’s story and character types meet or clash with the aesthetic protocols of the medium itself.
Take the Courtroom Television Network, or Court TV, which has billed itself as a "window" on the American justice system. The trials it shows plainly belie such a claim. The frequent depiction of interpersonal, often sexual, violence that these trials offer is highly unrepresentative of the vast majority of real trials. And when a more typical nonviolent civil dispute does make an appearance—a contract dispute, say—odds are it will feature a celebrity, like the lawsuit starring actress Pamela Anderson and the producers of the popular television series Bay Watch. To advertise its coverage of this case Court TV showed scenes of a bikini-clad Anderson happily romping on a Bay Watch beach. Sex, violence, and the cult of celebrity: this is, of course, the familiar formula for successful commercial TV fare. It is what viewers have come to expect (and, judging from the ratings, most like to see). Successful law shows mimic these desires and expectations. If they do not, it is unlikely that they will show up in the first place, much less remain on the air.

But what if similar expectations and production values were to shape and inform legal storytelling inside the courtroom? What if law and entertainment merged? If popular cultural visual techniques were to make their way into the courtroom, would we protest—assuming we notice? Should we distinguish between the persuasive effects of verbal as compared with visual metaphors? Does a change in the technology of communication make a difference in content? Do changes in dominant storytelling practices change the minds and culture of storytellers and audiences alike? And if they do, what sort of legal difference does that make? How do these changes affect the search for truth, the authority of law, and the struggle for justice in society? Raising and finding answers to these sorts of questions are critical goals of popular legal studies. Along this path of inquiry we begin to see that the interpenetration of law and popular culture is as much an aesthetic phenomenon, and a technological one (in McLuhan’s sense), as it is a matter of substantive law.

The academic study of law in popular culture is of relatively recent vintage, but the interpenetration of the one by the other is as old as Western law itself. As classicist Kathy Eden (1986: 7–8) points out, the average Athenian citizen participated “very directly and very regularly” both as spectator and as judge in the tragic and legal performance. Indeed, the dramatic discourse of ancient Greek tragedy informed the public’s understanding of law just as legal discourse helped to shape and inform the discourse of ancient Greek tragedy. The Greek experience is hardly unique. Two thousand years later, in Elizabethan England, Philip Sidney noted that the practical task of demonstrating legal and factual truths depends upon the fictional method (Duncan-Jones, 1989). How else can one reconstruct reality in the courtroom (Bennett and Feldman, 1981)? How else, but through the fictional devices of narration and drama, can one breathe life into the corpus of naked fact? Without the compelling force of drama, in conjunction with (though at times even in defiance of) the formal demands of law, advocates cannot activate belief and compel judgment by those whose duty it is to respond to the demands of truth and justice.

But today we face new issues and new challenges associated with the rise of digital communication and the proliferation of visual mass media. On the one hand, digital technology makes it possible to depict objects and events with previously unimaginable clarity. Images offer an immediacy of access to trained as well as untrained eyes. With the help of visual images, previously hidden physical details may be brought into plain sight: the way chemicals seeped into nearby ground water, the way a defective tail wing caused an airplane to crash, or how ammonia molecules were deliberately used by cigarette manufacturers to more effectively deliver nicotine.
Yet, precisely because of their ease of access and credibility ("seeing is believing"), visual images introduce new challenges – as the unwary prosecutor in the Rodney King case would have done well to note. Locked into his own literalist take on George Holliday’s amateur video of police officers surrounding and beating King, the prosecutor never paused to consider how the defense team’s digital reconstruction changed the visual narrative. By isolating visual frames and altering their flow, the defense reversed causation: instead of a story of racially prejudiced white cops beating an unarmed black motorist jurors saw a series of images in which police officers carefully "escalated and de-escalated" levels of force in direct response to King’s aggressive resistance of arrest.

Of central concern here is the peculiar efficacy of visual persuasion. There are three factors to consider. First, because photograph, film, and video images appear to resemble reality they tend to arouse cognitive and especially emotional responses similar to those aroused by the real thing depicted. Movies, television, and other image-based entertainments have overwhelmed text-based media in popularity largely because they seem to simulate reality more thoroughly, engulfing the spectator (or, in the case of interactive computer and video games and immersive virtual environments, the participant) in vivid, lifelike sensations. To the extent that persuasion works through emotion as well as reason, images persuade more effectively than words alone. Second, because images appear to offer a direct, unmediated view of the reality they depict, they tend to be taken as credible representations of that reality. Unlike words, which are obviously constructed by the speaker and thus are understood to be at one remove from the reality they describe, photograph, film, and video images (whether analog or digital) appear to be caused by the external world, without the same degree of human mediation and hence interpretation; images thus seem to be better evidence for what they purport to depict (Kassin and Dunn, 1997).

Third, when images are used to communicate propositional claims at least some of their meaning always remains implicit. Images cannot be reduced to explicit propositions. In this respect, images are well-suited to leaving intended meanings unspoken, as would-be persuaders may prefer to do – especially when evidentiary rules forbid making a given claim explicitly (Messaris, 1997).

Images, therefore, do not simply “add” to the persuasive force of words; they transform argument and, in so doing, have the capacity to persuade all the more powerfully. Unlike words, which compose linear messages that must be taken in sequentially, at least some of the meaning of images can be grasped all at once. This rapid intelligibility permits visual messages to be greatly condensed (it takes a lot less time to see a picture than to read a thousand words), and allows the image creator to communicate one meaning after another in quick succession. Such immediacy of comprehension enhances persuasion. When we think we’ve got the whole message at once we are disinclined from pursuing the matter further. And increasingly rapid image sequences disable critical thinking because the viewer is too busy attending to the present image to reflect on the last one. For both reasons, the visual message generates less counterargument, and is therefore more likely to retain our belief. Images, moreover, convey meaning through an associational logic which operates in large part subconsciously, and through its appeal to viewers’ emotions. Finally, images readily lend themselves to intertextual references that link the communication to other works and other genres, enabling arguments to draw on the audience’s presumed familiarity with those other works and genres and thus to appropriate meaning from the culture at large. An audience’s pleasure in
the familiar, their belief that they are perceiving reality, combined with quick and easy comprehension, make it more fun to watch than to read. And because viewers are occupied and entertained, they are both less able and less willing to respond critically to the persuasive visual message. Hence the message is more likely to be accepted.

The logic of new communication technologies cannot be kept outside the law, nor has it been. The modern (print-based, rule-oriented, linear-causal, objective proof-driven) explanatory style has not passed away, but that style’s ascendancy over truth and law is at an end. Today, viewers absorb a postmodern mindset from their everyday screen practices, in which images image other images and the simulated attains parity with lived experience. Consider: ours is a time when an American president’s video deposition, in the early stages of impeachment, was reviewed on the front page of *The New York Times* by the newspaper’s film and television critic. (In her review, the critic dutifully noted the tape’s “unlikely resemblance to Louis Malle’s film *My Dinner With Andre*.”) We live in a time when the American public can name TV judges but not real ones, and when real judges are expected to behave in court like the judges people see on TV (Podlas, 2001). Sometimes, judges even comply. Sometimes, so do police officers and lawyers.

Notably, these concerns are not confined to American legal institutions and culture alone. Growing tensions associated with the globalization (and homogenization) of culture as a result of reconfigured international trade patterns extend beyond market competition for produce and manufactured goods. Globalization has also sped the importation to other countries of American popular culture and its representations of law. Consider, in this regard, the Canadian nationals who insist on their *Miranda* rights when stopped by Canadian police. Having been virtually “naturalized” by an inundation of American law films and TV shows they apparently feel entitled to the same rights and privileges as “other” US citizens. Or consider German jurists who rise in court to contest rulings from the bench or who dramatically cross-examine witnesses on the stand. The habitual consumption of American popular legal culture, together with the adversarial norms that they embody, seems to have led them to forget the inquisitorial (nonadversarial, dossier-oriented) character of their own continental legal tradition (Machura and Ulbrich, 2001). These developments lead one to speculate whether the transnational appeal of adversarial legal melodrama, a genre prominently featured within Anglo-American popular culture (Clover, 2000), might be reconstituting global common sense (Herman and McChesney, 1997).

A basic premise of popular legal studies holds that the study and critique of law must now take into account new developments in popular culture and communication technology and the socioeconomic conditions under which popular legal representations are produced. Building on critical insights into the construction of legal consciousness in society (Ewick and Silbey, 1998), the study of law in popular culture offers a multidisciplinary approach to the reciprocal process of institutional and individual legal meaning making.

In pursuit of this goal, the study of law in popular culture brings together a theory, a practice, a field, a pedagogy, and an ethos. The theory builds upon constructivist insights which tell us that the particular form of expression – the discourse, the metaphor, the image that is used – is essential to the kind of truth that may be expressed. It uses a multidisciplinary approach (including cognitive and cultural psychology, anthropology, linguistics, and rhetoric; and media, film, and commun-
cation studies) to understand how legal meanings are made and transmitted in society. The practice engages microanalytic studies in which specific legal behavior is examined and assessed using a variety of analytical tools, including empirical as well as broader interpretive studies. The field ranges from formal sites and practices of legal meaning making (the courtroom, the legislature, the governmental agency) to everyday sites and practices (where people give voice to legal meanings in social discourse and absorb popular legal meanings from a variety of cultural artifacts including images on the screen). The pedagogy is eclectic, relying on diverse perspectives to build up, not necessarily in linear fashion, a mosaic of insights that may be brought to bear upon new and concrete fields of legal action. In this respect, the pedagogy of popular legal studies resembles the practice of the classical rhetor who would draw upon accumulated topics (i.e., discrete areas of substantive knowledge and aesthetic forms) as the particular situation required. Finally, the ethos that emerges from this multidisciplinary, constructivist approach takes shape in response to two central queries: who is responsible for assigning meaning to public symbols, and how is that responsibility being carried out? (Ober, 1989: 339). These questions lead, in due course, to a renewed encounter with the role and distribution of power under color of law in a democratic society.

In what follows I shall attempt to shed further light on each of these aspects of the study of law in popular culture while also fleshing out the parameters of this still emerging field.

**The Interpenetration of Law and Popular Culture**

Heightened awareness of the culture-shaping role of law in the United States can be traced to the writings of French historian Alexis de Tocqueville. It was Tocqueville who famously observed of American society in the 1830s that “[t]here is hardly a political question in the United States which does not sooner or later turn into a judicial one.” “The spirit of law,” Tocqueville wrote, “infiltrates through society right down to the lowest ranks, till finally the whole people have contracted some of the ways and tastes of a magistrate” (Tocqueville, 1969: 270). What Tocqueville failed to note, however, is that the flow works both ways: popular legal meanings also infiltrate upward into the highest echelons of legal power. Being part of a community means that we interpret events in overlapping ways using shared cognitive and cultural meaning-making tools. Many of the meaning-making tools that legal officials use enter into the domain of popular legal consciousness through popular cultural representations. But popular culture also produces its own tools and methods. It generates its own images, signs, stories, characters, and metaphors in the course of making sense of legal reality. In this way, official and unofficial legal meanings, sometimes unmixed, others times intermingled, routinely circulate through the mass media of popular culture.

As John Denvir succinctly puts it, “we can learn a great deal about law from watching movies” (Denvir, 1996: xi). And as Paul Joseph (2000: 257) observes, “popular culture reflects the already existing perception of law even as it helps to mold and reinforce it.” Through law films we confront the great moral dilemmas of the day, whether it is the intractable racism depicted in *To Kill A Mockingbird* (1962), the effects of homophobia dramatized in *Philadelphia* (1993), or the
legitimacy of capital punishment in films like *Dead Man Walking* (1995) and *The Green Mile* (1999) (Greenfield, Osborn, and Robson, 2001). Popular movies such as *King of the Pecos* (1936) and *The Man Who Shot Liberty Valance* (1962) confront viewers with troubling questions about the relationship between violence and the rule of law (Ryan, 1996; Nevins, 1996). Through a comparative analysis of law films one can also discern significant shifts in the objectives of popular legal representations. For example, one may contrast the Weimar law film genre during the late 1920s and the early 1930s, in which the social conflicts and political upheavals of the time were clearly in evidence, with the films that emerged after the Nazi takeover (in 1933) of the German film industry. During the Nazi period, German films used the law “to demonstrate the ‘humane’ and ‘benevolent’ character of the political system, …or to propagate the efficiency and security of the law system, thus glossing over the actually existing perversion of the law” (Drexler, 2001: 71).

A comparative analysis of law films also reveals significant shifts in social norms and expectations regarding lawyers and the legal system. Consider in this regard the profound disillusionment with law’s capacity to accommodate the demands of justice reflected in Martin Scorsese’s *Cape Fear* (1991) as compared with J. Lee Thompson’s more optimistic 1962 original (Sherwin, 1996). In a similar vein, one might also contrast the highpoint of heroic lawyer movies, such as *Young Mr. Lincoln* (1939) with the ensuing decade’s “cycle of cynical and stylistically expressionistic films” (Rafter, 2001) such as *Stranger on the Third Floor* (1940) and *The Lady From Shanghai* (1948), films that Norman Rosenberg has deftly called “law noirs” (Rosenberg, 1996).

It has also been noted that law films often get the rules wrong (Asimow and Bergman, 1996). This is surely at least partly the result of the different needs and demands of cinematic and televisual storytelling as opposed to written and oral legal narratives. Competition for market share, in conjunction with extant formulas and expectations regarding what a good film or TV show looks like, also play a role in actively shaping the public’s perception of litigation, trial lawyers, and the legal system as a whole. As Ray Surrette has written, “The crimes that dominate the public consciousness and policy debates are not common crimes but the rarest ones. Whether in entertainment or news, the crimes that define criminality are the acts of predator criminals” (Surrette, 1994: 131).

The media’s preference for emotionally stimulating and visually compelling stories is matched by its aversion to complexity. Multiple causes and systematic wrongs are considerably more difficult to narrate visually than straightforward melodramas featuring easily identifiable good guys and bad guys (Feigenson, 1999-2000). At the same time, the power and efficacy of new forms of visual storytelling have not been lost on advocates, whether in litigation practices or in litigation public relations and other forms of legal and political advertising. As Lawrence Friedman notes, “The media spread slogans like ‘three strikes and you’re out’ or ‘old enough to do the crime, old enough to do the time.’ Criminal policy is made by Polly Klaas and... tort policy is made by the hot coffee at McDonald’s, and various other urban legends” (Friedman, 2000: 557).

Popular legal representations in films and on television not only help to shape and inform public perceptions; they also serve as cultural barometers. They can tell us about shifting public beliefs and opinions regarding law, lawyers, and the legal system generally. As Suzanne Shale writes, “Unless we pay attention to how the mass entertainment industry represents law and the legal system, we cannot hope to
know what relationship subsists between law and its subjects” (Shale, 1996: 992). We may look to popular legal representations as a fruitful source of insight into popular disenchantment with, and criticism of, lawyers and the system of justice. For example, from the 1970s on, film depictions of lawyers have been almost uniformly negative. Over the same period, polls have consistently shown that the public’s regard for lawyers in the United States has undergone a prodigious decline. Since 1977, the number of Americans who believed lawyers had “very great prestige” has slipped from 36 percent to 19 percent (Asimow, 2000).

Just as the emergence of a popular vengeance film genre (such as the highly successful Charlie Bronson vigilante films of the 1970s) may betoken broad public dissatisfaction with law’s inability to resolve outbreaks of criminal violence, a similar phenomenon may also be noted with respect to the notorious case. In these compelling public dramas clearly more is at stake than the fates of the particular parties in court. These trials are vastly overdetermined with social, political, cultural, and psychological meanings for the nation at large. They are sites of law where the deepest, most intractable conflicts of the day play out. For example, in 1991, the O.J. Simpson double murder trial enacted the clash between state racism and the cult of celebrity. In 1907, the trial of Harry Thaw for the murder of Stanford White, New York’s most renowned architect, evoked nostalgia for natural law justice in the face of modern disenchantment and uncertainty. And in 1859, the trial of John Brown following his failed attempt to provoke a slave uprising by attacking a federal armory at Harper’s Ferry (where few slaves were to be found) dramatized the clash between pointless violence and the heroic melodrama that was generated by leading transcendentalist thinkers such as Ralph Waldo Emerson and Henry David Thoreau (Sherwin, 2000). Whether unconsciously simmering or explicitly confronted, symbolic legal conflicts will either be successfully worked through at trial, or meet with further irresolution or repression, thus ensuring some future restaging.

On this view, then, the transmission and reception of notorious trials and popular legal representations alike may offer opportunities for resistance and critique as well as for broad affirmation or reinterpretation of inherited legal meanings. Indeed, popular culture’s reactions to, and reflections of, legal reality may provide the public with aspirational, perhaps even utopian, yearnings. As Austin Sarat (2000: 429) writes, “Film is not simply a mirror reflecting distorted legal and social realities. Rather, film always projects alternative realities which are made different by their filmic invention, or the editing and framing on which film always depends.” For example, at one extreme, one may point to the subversive impact on law (and on the norms that constitute the Western liberal tradition) deriving from the skeptical, acausal, postmodern visual narratives of Quentin Tarantino and David Lynch, among others (Sherwin, 2000). At the other end of the postmodern spectrum, however, we also encounter a strongly affirmative paradigm in which acausality, constructivist epistemology, and ethical renewal acquire new and highly potent forms of expression. This may be seen, for example, in the brilliant filmmaking of Krzysztof Kieslowski, among others (Sherwin, 2001).

The reality effects of popular legal representations suggest what is missing from Tocqueville’s early insight into the relationship between American law and culture. Tocqueville may have been right when he noted that “the spirit of law infiltrates through society right down to the lowest ranks,” but this insight, on its own, leaves an important component out of the equation, namely; how popular cultural representations help to provide the meaning-making tools and topics that constitute law,
from everyday legal practices to the highest ranks of judicial decision making. Let us consider in further detail how this may be so.

LEGAL MEANING-MAKING TOOLS AND TOPICS

It is now widely accepted that our sense of history, like our sense of memory and self-identity, is in large measure the result of arranging and telling stories. And just as it is through stories that we construct the meaning of individual and collective experience so also it is through stories that we are moved to blame (or exonerate) others (Pennington and Hastie, 1993). Legal scholars, however, have been less quick than their counterparts in other academic fields to heed the implications attending the cultural shift to visual literacy. For if reality today is increasingly being perceived as the effect of the sign, and if visual images have come to be seen as more real than the real (Baudrillard, 1990), then that is what we should expect to see in journalism, advertising, politics, and law. And, indeed, that is precisely what is taking place. It is the play of signs relating to signs and of images invoking other images that we see when lawyers visually reconstruct reality in the courtroom.

The principal source of stories and storytelling styles in our time is television and film. The parameters that these media set increasingly serve as the measure of reality as most people know it. What we think about and the cognitive tools we use to think with lie, in large measure, within the province of the visual mass media. Increasingly, lawyers are realizing that effective persuasion requires not only tapping into the reality that people carry in their heads, but also emulating the habits of perception and the styles of thought that extensive exposure to mass-mediated popular culture has produced. Advocates today know, and are putting to use, what advertisers and politicians have known and practiced for quite some time: how to get the message out; how to tailor content to medium; and how to spin the image, edit the bite, and seize the moment on the screen and in the mind of the viewer. Courtroom videos have emulated TV news shows, game shows, and commercials. They also have directly incorporated feature film images. In at least one instance, blurring the line between film and reality constituted a key trial strategy. According to Jeremiah Donovan, lead defense attorney in a complex organized crime trial, the state’s evidence was so extreme (like the board with a hundred human bones attached to it), that it caused jurors to experience a loss of reality. Pieces of evidence seemed like “props in a drama.” This insight inspired Donovan to turn his summation “into a story . . . that sounded like a movie plot” (Sherwin, 2000: 31).

This aestheticization of the real in actual legal practices also coincides with the rapid development of litigation public relations and high-priced media campaigns for law reform. Legal battles are now being waged not only inside the courtroom, but also before television cameras on the courthouse steps, on popular TV talk shows, and in paid legal advertisements. As one Chicago-based personal injury lawyer put it, “Publicity is an issue in civil and criminal cases all the time.” And once the image spinning begins, it is hard not to respond. As one corporate spokesman put it, “If we allow the imagery that the attorneys and the spokespersons for our competitors have laid out for the news media to absorb and to linger, we would be paying many kinds of costs in correcting that damage in the perception of the general public” (not to mention the perceptions of prospective jurors) (Sherwin, 2000: 148). Publicity via mass media communication, it turns out, is but one more tool in the
contemporary advocate’s toolbox. Even Justices of the United States Supreme Court have acted with an eye to the efficacy, and manipulability, of mass media images (Sherwin, 2000).

The deliberate deployment of popular legal representations, both inside and outside the courtroom, for the sake of advancing the interests of a particular client or a preferred legal position, implicates a broad array of topics, including media literacy, cultural and cognitive heuristics, and, of course, legal ethics. This development makes it imperative for law teachers and legal scholars to study the various ways, both conscious and unconscious, in which we construct, perpetuate, modify, or abandon legal meanings. In order to adequately assess this meaning-making process legal scholars need to acquire greater familiarity with the full range of meaning-making tools and competencies of lawyers, judges, jurors, and the lay public, as well as those of public relations agents and other communication experts. What kinds of stories and storytelling styles, what story elements and character types, what popular metaphors and legal categories, what communication technologies and associated forms of logic are available, and under what conditions, and with what effect upon feeling, belief, and judgment?

This is, of course, another way of stating the pivotal query that guides Aristotle’s approach to rhetoric, namely: what are the available means of persuasion in the face of a given legal conflict or controversy (Aristotle, 1954: 24)? A more expansive restatement of rhetoric’s goals along similar lines today would incorporate insights into the meaning-making process from a variety of scholarly domains, including cognitive psychology, cultural anthropology, sociology, linguistics, media studies, film studies, and advertising. This continuing effort to breach the walls that have traditionally balkanized legal studies, unduly limiting its field of research as well as its theory base, practice, pedagogy, and range of analytical tools, brings us face to face with the constitutive elements of popular legal studies, a subject to which we now turn.

The Law/Culture Matrix: Constituting Popular Legal Studies

The genre of cultural studies has been providing scholars with interdisciplinary tools since the late 1970s (Hall, Critcher, Jefferson, Clarke, and Roberts, 1978; Williams, 1980). Cultural studies focuses on the production, circulation, and assimilation of symbolic forms. It is largely concerned with how institutions and local practices generate social meanings (Turner, 1993). This eclectic approach has been somewhat belatedly adopted by a number of legal scholars who have sought to go beyond appellate caselaw, statutory interpretation, and social policy, the dominant topics of law teaching and academic writing, in order to more broadly encompass legal meaning-making practices throughout society (Sherwin, 1992). As Barbara Yngvesson has written, “[t]he spirit of law isn’t just invented at the top, but is transformed, challenged and reinvented in local practices that produce a plural legal culture in contemporary America” (Yngvesson, 1989: 1689). Whether it is starting rumor campaigns to contest corporate control over cultural symbols (Coombe, 1998), getting a court clerk to recognize a story of abuse as a legal claim (Yngvesson, 1989), or resisting mediators who construct images of problems in therapeutic as opposed to legal terms (Silbey and Merry, 1986), these practices at
the local level constitute the “microphysics of power” (to use a Foucauldian phrase). Here we find highly contextualized forms of cultural dominance and resistance.

Legal cultural scholars such as Jerome Bruner, Anthony Amsterdam, and Neal Feigenson similarly offer a microanalysis of local practices that isolates a broad range of linguistic, narratival, and rhetorical elements. Whether it is decoding a Supreme Court opinion as a “combat myth” or a “demon lover adultery tale” (Bruner and Amsterdam, 2000) or a personal injury lawyer’s summation as a melodrama of personal blame (as opposed to systemic responsibility) (Feigenson, 2000), these scholars ask, what are the popular cultural codes, the familiar schemas and scripts, the common vocabularies of motive and intentionality, and the hierarchy of beliefs and values, that are in play within a given site of cultural production? In search of the constitutive elements of legal consciousness, which is to say the popular cultural materials out of which legal meanings are shaped, disseminated, and absorbed, cultural legal studies has branched out to the quotidian world of film, television, and the Internet, among other sources.

If the guiding insight that informs popular legal studies is that law is not autonomous, that the boundary between law and culture is quite porous, its scholarly method follows suit. This emphatically practical, multidisciplinary approach to cultural analysis forces critical theory to touch down by bringing to bear a broad array of analytical tools within specific, concrete contexts. At the same time, however, popular legal studies also remains sensitive to the dangers of excessive critique and pervasive disenchantment (Sherwin, 2000). Familiar postmodern gestures of irony and playful skepticism fail to do justice to the ongoing need for empirical discovery, interpretive insight, and normative commitment. To further this more affirmative goal, the search for new sites of law, and for the social ramifications of its power, must continue to expand.

The pedagogy of this form of study is eclectic, participatory, and pragmatic. As our stories and storytelling technologies and practices change so too do our forms of belief and judgment and our expectations about what constitutes proof and effective persuasion. With the ascendancy of electronic monitors inside the courtroom, students of law must be able to account for the everyday associations that jurors bring to the screen. They must also accommodate the familiar programs and information schemas that viewers absorb from computers at home and in the office. By the same token, they may need to come to grips with jurors’ increased expectations about being allowed to surf screen data for themselves. As computer users internalize the thinking tools provided by software in conjunction with Internet-bred habits of data search (or “surfing”) via free association, concomitant adjustments may be needed in legal communication and advocacy. Accordingly, legal education must adapt to the contingencies of technology and the emerging vernacular of the digital mind (Lessig, 1999; Rohl and Ulbrich, 2000).

Finally, popular legal studies also points to new ethical issues and challenges. For example, as more people, practiced in the techniques of digital production, come to realize the manifold ways in which perceived realities may be constructed or changed, a new skepticism may emerge. How will legal advocates reassert the authority of truth claims? Conversely, how will law in the age of digital images cope with the mind’s default capacity for acceptance and belief (Gilbert, 1991; Gerrig, 1993)? Will new levels of media literacy meet the challenge of critically confronting persuasive images on the screen? Or will the engineering of belief and judgment tighten its grip on the mind (Ewen, 1996)? We should also consider
whether the power that attaches to legal meanings will stream down from an elite, self-appointed group of culture producers, or will it percolate up from the authentic needs, desires, and imaginings of indigenous communities? The story of Marcus Arnold, the 15-year-old who became the Internet’s highest-rated legal advice giver, provides an intriguing, albeit inconclusive indicator. Marcus believed that he had learned enough law from watching TV to give legal advice without conducting actual research. Notably, when his age and modus operandi became known this had no dampening effect on his popularity (Lewis, 2001). Is this a tribute to Marcus’s communicative skills (as well as a slap at the profession’s communicative failings)? Does it portend the ascendancy of a populist legal culture which operates to the detriment of counterintuitive legal expertise? As we learn more about the law/culture matrix, basic questions about the continued vitality of democratic principles are bound to emerge with new vigor. Once we ask who assigns meaning to legal symbols in society, how, and with what effect, we directly confront the political and ethical dimensions of popular legal studies. Ethics, in this context, is a matter of taking responsibility for meanings. And it is with this challenge in mind that we turn to the scholarly program, and global implications, of studying law in popular culture.

**Future Prospects**

A major objective of popular legal studies is to explore how legal meanings are brought “on and off line” or are kept more or less permanently suppressed. Concomitant with this research is the effort to examine the social, political, and psychological processes that may account for how and why this meaning selection process occurs. Empirical research can help to uncover the social scripts, stock stories, stereotypes, myths, metaphors, and other cognitive or linguistic representations that people use, under what circumstances and with what effect, in constructing beliefs and judgments about particular legal outcomes as well as more general legal issues. This empirical inquiry is of particular interest in light of the increased use of visual technology inside the courtroom as well as growing reliance upon techniques of visual persuasion in the domain of popular mass media (such as litigation public relations). To date, an empirical analysis of the actual effects of computer animation, movies depicting a day in the life of accident victims, video arguments, digitally reenacted crimes and accidents, and legal advertising has barely begun. As social psychology researchers Neal Feigenson and Meghan Dunn (2003) note:

> Without useful empirical research, advisory committees and legislatures are not yet in a position to draft, recommend, and enact evidentiary rules to address the uses of modern methods of visual communication… Without a reliable understanding of the effects of visual technologies, both on the jury and on the trial process itself, judges are unable to estimate accurately the probative or prejudicial effects of visual evidence…It is particularly important that the research be grounded in and elucidate psychological theory concerning perception and social judgment. If the mechanisms by which current visual technologies influence trial participants can be identified and understood, the benefits and risks of emerging technologies can be more readily and accurately evaluated. Feigenson and Dunn, 2003: 110–11

In addition to new empirical studies, aiding in both the production and evaluation of new visual strategies of persuasion, legal scholarship should also continue to,
pursue interpretive studies of popular legal representations. Analyzing images from film, television, and the Internet may not only expose how public expectations and beliefs are being shaped and informed by these media, they also may offer new insights into the cognitive tools and cultural content that people bring with them to court and elsewhere where legal meanings are elicited, debated, and perhaps transformed. These cultural sources also may be mined for normative content, whether as sites of popular resistance to legal authority, mass cultural manipulation, or as exemplars of new forms of affirmation and utopian striving (Sherwin, 2001).

Bringing popular cultural studies into the classroom means that visual representations may be imported for multiple uses. Providing insights into the law/culture matrix promises to enhance knowledge of what lawyers do, what law consists of (and where it may be found), as well as how it enables the enactment of particular models of self, other, and normative worlds, or suppresses them (Cover, 1983). Notably, this study crosses national boundaries. As numerous commentators have noted, the United States is the dominant exporter of popular culture, including popular legal culture. What impact does this have on importing nations? This inquiry brings new importance to issues surrounding the ownership and control of the means and content of mass communication (Herman and McChesney, 1997). Is the global convergence of media control a precursor to a transnational popular legal culture? Explorations of the possible nexus between transnational corporate marketing strategies and Americentric ideologies, technologies, and institutions may benefit from taking popular legal representations into account. The postcolonial impact of new technologies and new market conditions on indigenous cultural patterns of legal meaning making warrants further analysis.

As a related matter, one might also consider a subfield of popular legal studies that takes as its focus law and media ecology. Douglas Reed has noted a powerful confluence of legal and judicial proceedings on the one hand, and the power of the mass media, including the use of television experts and a sophisticated polling capacity, on the other. According to Reed, this has generated an extraconstitutional mechanism significantly affecting the policy-making and governing process. He calls it the juridico-entertainment complex. This complex "transforms legal proceedings and legal conflict into consumable commodities that purport to educate and enlighten, but simultaneously titillate, amuse, and otherwise entertain a mass audience" (Reed, 1999). The global exportation and consumption of American popular legal representations in conjunction with shifting trade practices and the proliferation of new mass communication technologies, raises the possibility that the juridico-entertainment complex may become a transnational phenomenon (Machura and Ulbrich, 2001). As a concomitant of the commodification of, and global trade in, popular legal representations, issues concerning media literacy, Internet access, intellectual property, software design, privacy, antitrust enforcement, and international trade regulations assume a particularly pressing importance within the field of popular legal studies.

In this regard, it is also important to bear in mind the tension between mass (commodified) culture and popular (indigenous) culture and the concomitant strain between the imposition of consumerist forms of identity and the struggle to create more authentic or more meaningful forms of identity. As an agency of cultural production, and a cultural product in its own right, law mediates (at times repres sively, at other times creatively) between competing ways of life. To be sure, the relationship between culture and identity is complex. The colonization of individual
self-consciousness by hegemonic cultural forces, such as the dominance of mass-mediated popular representations, is never total. The reality of lived experience remains, and constitutes itself anew in local cultural forms of expression (Ewing, 1997: 18–19; Turner, 1993: 427). Maintaining a sense of the multiplicity of discursive possibilities and practices aids cultural analysis, even if it entails contradictory relations with others and among incommensurable fragments of self-identity. On this view, the study of indigenous popular legal representations around the globe may provide a rich source of descriptive and critical cultural insights regarding resistance, affirmation, and transformation in the face of new forms of state or private manipulation and control of legal consciousness.

**Conclusion**

Law adds the force of the state to cultural norms. But how are those norms constructed, commemorated, transmitted, and imposed? There is a two-way traffic between law and popular culture, and it behooves us to understand how the one helps to shape and inform the other. How else can we discern whose norms the law encodes or excludes? Popular legal studies reflects a broader scholarly move to elucidate how meanings are made and conveyed in society. It accounts for the communicative and persuasive elements of legal practice as well as the quotidian practices of popular legal meaning making by members of the public at large. Changes in dominant storytelling practices portend changes of mind and culture. Today, our stories are increasingly visual. Understanding the complex and ubiquitous process of legal meaning making requires that legal scholars come to grips with these developments.

The study of law in popular culture embraces a multidisciplinary analysis of the manifold ways in which the interpenetration of law and popular culture constitutes legal consciousness. Along the way, it uncovers sites of resistance and creative affirmation. It also encounters new forms of dominance. We may see this, for example, where legal persuasion and commercial entertainment values merge, leaving heightened sensory gratification as the benchmark for popular judgment and belief. Whether this standard or some other will ultimately prevail remains to be seen. In the meantime, the study of law in popular culture may help us to monitor and assess who gets to assign meaning to the public symbols of law, and with what legal and political effect. Taking responsibility for the production and effects of legal consciousness is one (perhaps the most crucial) way in which we take responsibility for the kind of society in which we live.

**References**


Further Reading


