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Chapter 1 : "A History of Representations of Justice: Coincident Preoccupations of " by Jessica M Silbey

A History of Representations of Justice: Coincident Preoccupations of Law and Film REPRESENTATIONS OF JUSTICE, Masson, O'Connors, eds., Peter Lang, 26 Pages Posted: 25 Jan Last revised: 5 Feb

It began alongside the study of film and law, but its trajectory and import differ in significant ways. This Introduction provides both an overview of the earlier work on law and television and context to the current collection of essays. There are several putative beginnings to law and television scholarship, all dating to the s. The early work of both Stewart Macaulay¹ and Lawrence Friedman² featured the role of television in the development of popular legal culture. Around the same time, studies of Perry Mason com- plemented those describing the popularity of the pioneering legal drama LA Law. However, by the beginning of the new century the emphasis switched to film, with only modest contributions in the late s to the study of law and justice on the small screen. Media departments and cultural studies programmes today, however, study television as a unique medium with its own representational systems, production mechanisms and distribution channels. The beginnings of the law and culture field did not treat television differently from film and literature. Overview of Law and Television Studies The earnest study of law and popular culture began in the mids with its mixed focus on literature, film and television. Over the last 20 years, there has been an explosion in the number of books, edited collections and individual essays devoted to law and popular culture. The vast majority of these have centred on film. Since , more than 16 monographs have been written in the field of law and film, and over a dozen edited collections or special journal editions have been pub- lished. See the references at the end of this Introduction. Conspicuously absent from the larger body of this more recent scholarship, however, is a focus on television. While scholarship on law and film has flourished, there has been relatively little published on lawyer and legal processes on the small screen. The same is true for French and German scholarship. This dearth of scholarship devoted to television in the law and popular culture field is ironic. Television reaches the vast majority of the population. It is more democratic in its processes and distri- bution mechanism than film. It provides news, dramas, documentaries and comedies seven days a week, 24 hours a day. Cinema, the pre-eminent source of mass entertain- ment since the early s, is on the decline. Visiting the cinema is now a luxury and is reserved for a relatively small population of Western audiences. Most television scholarship about law focuses on the police and prison system and not on legal processes or lawyering. The separateness of the trial process from detention and imprisonment is a consistent feature of a considerable body of programmes in Britain and the United States. One result of this separateness is that lawyer shows rank as a mere sub-genre in the field of legal television studies and criticism. There may be legitimate institutional and material reasons for both the dearth of scholarship on legal television programming and for a growing future in the area. As discussed elsewhere in greater detail,¹³ practical problems exist in assembling the mate- rial. Given this, scholars have frequently worked on individual shows that were acces- sible on video. The same appears to be the case in the United States and Canada. Although these are not insuperable obstacles,¹⁶ they reinforce the unarticulated hierarchy in cultural products in which television comes after literature and film. Availability is, however, patchy. Despite these hurdles, there has been a slow and partial recognition of the significance of television in this area. The pioneering series Law and Order no relation to the American series is also now available. The sheer quantity of material even in the most modest series is huge, and for some a barrier to research. Typically, even a modest run of a series involves a dozen one-hour episodes. The attraction of looking at a single two-hour film as opposed to at least 12 and pos- sibly 40 hours of television programming may be irresistible. Yet anyone wishing to undertake a serious study of any series is required to undertake a longitudinal study of the series. Many chapters in this volume accomplish this Herculean task. Certainly, in media and communication departments, the study of television has been a mainstay since the s. Contrasting Theoretical Approaches to Lawyers in Popular Culture The scholarly approach in law and film studies varies, and this diversity informs the structure of the current volume. The

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Legal System on the Silver Screen New York, New Press, describing films about law as a vehicle to explore popular beliefs about law and politics. See also for essays discussing film stories about law John Denvir ed , Legal Reelism: Betting that the sheer ubiquity and influence of television ought to attract those interested in the impact of popular culture on legal or other socio-political systems, we embarked on collecting the essays for this volume. Noteworthy Television and Law Books of the Past Several books about law on the small screen deserve mention before setting out the structure of the present book. Prime Time Law³³ was an early examination of television lawyers and legal procedure. A main interest of this collection by Robert Jarvis and Paul Joseph is its spotlight on television lawyers. It consists of 17 essays written by a combination of academic lawyers, historians and specialists in the media. Eleven essays focus on individual shows that span four decades of television: As Seen on TV is a sustained argument on the representation of legal process on television and its interrelationship with social justice more broadly. She also focuses on Law and Order specifically, as well as some of the more notorious trials of the past three decades including that of OJ Simpson and the Menendez brothers. Rapping argues that the public consumption of law in the forms it has taken on television mostly crime shows, whether fictional or not implicates the political growth of the conservative right in the United States. Hers is a trenchant and vigorous critique of the social construction of the legal imagination through popular culture. Visions de la Justice n 8. Theoretical Perspectives on Television and Law Studies In this book we sought to take stock of the diversity of approaches to the study of law and television, and to craft a preliminary taxonomy that enriches analysis in the field. Building on some of the earlier empirical and historical work on television production and media reception, Part I of this book investigates the method and context of doing law and television scholarship. These essays make some of the most unique contributions to the field, and it is for this reason that we have put them at the beginning of the book. The first section of Part II contains four essays that bring the field into the twenty-first century, evolving understandings of past law and television genres for a contemporary audience. Christine Corcos identifies a new American genre of television show about law: Tung Yin explores yet another new American law and justice television genre: His chapter focuses generally on the content of these newly popular shows since 11 September , and also more specifically on the characterisation of lawyers within the stories. Yin compares the mostly negative characterisation of criminal defence lawyers in these shows with real life examples of lawyers involved in real-time counterterrorism operations as a way to critique and challenge the portrayal of lawyers in this new genre of television programming. Marder conducts a qualitative and quantitative content analysis of these shows to draw conclusions about the character and role of television judges as they relate to our understanding of actual judging and courtroom practice. Freya Kodar uses empirical and historical methods to analyse the reality television show Til Debt Do Us Part, which airs primarily in Canada and is about debt management. Mark Tunick analyses a new genre of reality television that combines twenty-first century surveillance and communication techniques to target criminal predators. This chapter is both an examination of a particularly horrifying feature of our criminal justice landscape, as well as a trenchant analysis of the complicity of television and television viewing in exacerbating the social ills the programme claims to be exposing. Machura is particularly interested in the changing trends of that programming as it relates to the commercial pressure on television broadcast companies to increase their audiences. Indeed, he notes a trend in the programming that is also reflected in the other chapters in this section: The essays in this last section focus on individual shows in order to examine contemporary themes of law and justice. The innovation of this last section is threefold. Second, these chapters focus on the particularly contemporary manifestations of legal programmes: So, in short, to those who have recently joined the conversation, welcome—we are proud to have your work in this volume. To the others who have returned to contribute to scholarship about law and popular culture, we thank you for joining us in this particular volume on law and justice on the small screen. Black, D, Law in Film: Chase, A, Movies on Trial: Doherty, M, Heroes and Villains: Multiple Readings of a Feminist? Levi, R, The Celluloid Courtroom: Lucia, C, Framing Female Lawyers: Global Law and Global Music?

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Chapter 2 : A History of Representations of Justice: Coincident Preoccupations of Law and Film - CORE

NELCO NELCO Legal Scholarship Repository Suffolk University Law School Faculty Publications Suffolk University Law School A History of Representations of Justice: Coincident Preoccupations of Law and Film Jessica M. Silbey Suffolk University, jsilbey@calendrierdelascience.com Follow this and additional.

The portrayal of the legal system in popular media the fascination of popular media with the operation of the legal system is not new. For many years, novelists, playwrights, and screenwriters have produced an endless catalogue of works focused on crime and punishment, trials, lawyers, judges, and other pieces of the intricate puzzle that comprises the legal system. Their sensory-stimulating potentials, and ability to reaching viewers in virtually every corner of the world, makes video recordings a premier vehicle for the propagation of cultural values, ideas, and attitudes about many facets of social life, including the legal system. An average lay person today would likely describe the scene of a courtroom hearing as featuring a black robed judge, gavel in hand, presiding from an elevated podium whilst questioning a witness seated to her side. The jurors are contained in a special section the jury box and are situated farther apart, and the lawyers stand side-by-side, front and center, in a spacious courtroom where members of the public, too, are in attendance. Such a scene, taken from an American trial, has become a staple in popular culture in countries as far as Argentina, the Philippines or Malaysia, in great part due to the global reach of American television series. Notwithstanding, we can say that law-related television series tend to have at least two features in common. First, their portrayal of the legal system tends to be neither completely accurate nor real, but instead dramatized, skewed, and distorted to varying degrees. This should come as no surprise given that their main goal is to entertain. Second, law-related television series also tend to put emphasis on the dramatic twists and turns of legal cases, courtroom drama, and shocking events that are often seasoned with gore and disproportionate violence. Anyone who is familiar with the operation of the legal system knows that most dramatic events as depicted in television series are not common, and that the real life of the law is instead filled with mundane activities and routine tasks that would certainly seem dull and uninteresting to a lay person, and therefore unappealing to film producers and playwrights, too. Unless it helped support some dramatic twist, the writer of a television series would never focus their story on the average legal dispute between a tenant and her landlord, the administrative processing of a traffic violation, or the filing of a motion to dismiss a case for lack of jurisdiction. The situations from which screenwriters generally get their inspiration tend to be unusual crimes, political scandals, pressing social issues, or notorious court cases. Current events such as terrorist attacks, drug trafficking, gender and racial tensions, and gang violence inundate popular television series these days. In any instance, scriptwriters take those situations as raw material and manipulate them, add drama to their plot, and embellish otherwise lackluster stories, but also make sure that some realistic or familiar content remains. After all, people the audience of a play, television show, or movie are more likely drawn to stories that are familiar to them, events and messages that have symbolic meaning, or about which they have an opinion. In this sense, television series and other popular media become valuable forms of cultural expression. Their depiction of events or situations where the law intersects with social behavior, norms, ideologies, and values is likely to have an impact on how the public sees the legal system and relates to it. Measuring such impact is another story. In any case, the relationship between popular media and culture is synergetic in the sense that they impact each other. Furthermore, popular media reflects a particular set of values, ideas, and attitudes that certain people hold about the law legal culture , and in turn contributes to reshaping and disseminating similar values, ideas, and attitudes back to society, as in a never-ending cycle. The concept of justice is also important here. Popular media serves as a conduit that transmits an interpretation of what justice is, from the screenwriters “through the characters that they create” to the viewers, and from them to the rest of society. In many law-related movies and television shows the idea of justice is presented in more than one way. More often than not, the impeccable behavior of the agents of the law is exaggerated; conversely, the actions of those depicted as

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deviants are dramatized as well. On the other end of the spectrum, there are storylines where the formal authority is presented as having become illegitimate, so the only way to achieve justice and save the day is by breaking the formal law and confronting the officials who have gone astray. Given the unlimited reach of human creativity, imagination, and the incredible technological advances at our disposal, the variations among plots: One of the most common representations of law and justice in popular media focuses on the official level, and the hurdles faced by those involved in one way or another with the workings of the state. There is also an important sub-genre where the normative order depicted is one that emerges and operates outside of the official legal system, and is often presented as being at odds with it. These private, unofficial, or indigenous legal systems [8] might be portrayed as dependent on their own sets of norms, institutions, and enforcement mechanisms. The reasons for their indigenoussness obviously vary depending on the plot, but the most common depiction is of social groups, the members of which are criminals, deviants, or act outside the law, and yet devotedly abide by their own unofficial normative regime. Simply put, despite being outside the state those groups act within the confines of their own legal system. Despite the obvious differences that stem from each story, and the characters involved, there seem to be some common features among the criminal organizations depicted in popular films. First, criminal organizations in popular television shows usually feature a clear hierarchical structure whose core members are related to each other through multi-stranded ties that include family, ethnicity, or some other affiliation such as longstanding friendships. Second, the roles in each of these groups are also clearly defined from top to bottom, and recognized both within and outside the organization, especially among the law enforcement officials that are naturally depicted as their nemesis. Unsurprisingly, most of the attention given to the characters of the underworld in popular culture tends to focus on their criminal activities, and the intrepid behavior of their members who are usually featured among the main characters of the show. With the exception of the characters depicted as ruthless villains whose antisocial behavior challenges every convention and breaks every possible rule including their own intra-group norms, criminal organizations are generally shown as having their own internal legal order of sorts. At the core of these indigenous orders are their own sets of laws and internal control mechanisms that ensure compliance with those laws. One common feature of these indigenous legal systems is the presence of a leader or kingpin who makes important decisions, including the adjudication of disputes. None of these standards or normative codes, however, appears to be contained in any document or written record, which is not surprising given the purported illegal nature of those organizations. Notwithstanding the absence of written laws, there is never confusion as to the scope and effect of those laws, or their meaning, which all members seem to understand and abide by. Unlike the case of many television series and movies about the official legal system, where important parts of the story are devoted to showing intense disagreements between the parties to a dispute, their lawyers, and the court regarding the interpretation of a particular law, the laws of the underworld always appear to be crystal clear and compliance seems to be very high. One key element in the legal systems of the underworld portrayed by the popular media is the internal sanctioning power of the group. Depending on the severity of the violation, mafias and other criminal organizations shown in television shows act swiftly when imposing fines and giving other economic consequences to violators. Among organizations such as drug cartels or smuggling operations, sanctions range from the loss of a market share, a monetary sanction, or the deprivation of an earned commission. Occasionally, the injured party also seeks revenge, retaliation, or decides to snitch to the official authorities, so these may in turn prosecute and punish the guilty party. Intra-community sanctions are usually decided summarily at the highest level by the bosses or leaders, but are carried out by specially designated enforcers who are usually depicted as ruthless individuals otherwise unconditionally loyal to their bosses and to the criminal organization to which they belong. At the center of the plot there is usually an individual or a group of individuals whose moral compass is mislaid, and who act as if no laws or norms apply to them. In other words, these characters are both outside of the state apparatus, and also act without any regard for their own community or intra-group norms. The interplay between the two dimensions, and the degree to which they appear in the different storylines, may lead to an array of different

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possibilities. The following coordinate system shows four basic combinations that illustrate this dynamic. The professional legal actors such as lawyers, judges, and law enforcement officers are mostly depicted as being inside and within the official legal system A. A police officer or a lawyer who breaks the law regardless of his or her motives could still remain inside but act without respect for the rules B. The members of outlaw groups such as crime syndicates, mafias, and other close-knit organizations will always be outside, but as long as they follow their own normative order we will place them along the within continuum C. Finally, the individuals whose behavior challenges all normative systems, including the rules prevailing in the underworld, will be deemed both outside the state and without rules D. As in a geometrical plane, the possibilities are infinite and will move along or up, depending on whether each character is inserted inside or outside the official legal system, and acts within or without conforming to any norms. The popular media depiction of how outlaw organizations operate, their purported internal efficiency, and their relationship with the official legal system, is most likely an idealized and exaggerated rendering of their real-life version. Nevertheless, as I explained earlier, law-related television shows and movies serve as conduits for the dissemination of the traditions, ideologies, and norms prevalent in society as interpreted by their authors and scriptwriters. Each of the movies and television series mentioned earlier feature certain characters depicted as criminals who seem to place a high value on their own version of justice, fairness, due process, and other ideals generally associated with the official legal system. Following my proposed classification, these characters tend to be outside the state but within their own normative systems. The notion of justice portrayed in such cases is, of course, retributive and also at the service of their family, gang, or enterprise, and not the interest of society at large. As a result, one could argue that what is depicted there cannot be considered real justice, but perhaps something else. In any case, the fact that these indigenous normative systems exist contributes to reaffirming the idea that dispute processing is not the exclusive business of the state. Furthermore, this also shows that even those depicted as deviants in the eyes of the official legal system are able to develop their own normative system, including a sense of what is right and wrong, and what is just and unjust. In the sections that follow, this article explores the aforementioned dynamics using two acclaimed television series; *Breaking Bad* and its spin off *Better Call Saul*, as points of reference. *Breaking Bad* traces the journey of Walter White, a terminally ill high school teacher, from his uneventful middle class life to becoming the most powerful and dangerous methamphetamine manufacturer in the Southwestern United States. *Better Call Saul*, a spin off, follows the story of lawyer Saul Goodman, one of the supporting characters in *Breaking Bad*. These shows not only portray how the formal legal system appears to respond to crime but, more importantly for our analysis, how criminal organizations as depicted in popular media regulate themselves, process disputes, and deliver sanctions. In a broader sense, these examples help illustrate how popular media disseminates the notions of law and justice developed and supported outside the formal legal system. In addition, this framework also has the potential to contribute to the discussion about what values, perceptions, and images about the law are transmitted to the public through popular media and how such transmission occurs. A tacky lawyer who routinely represents crooked clients and assumes the legal representation of the main characters of *Breaking Bad*: Walter White and Jesse Pinkman. Goodman embodies the opposite of what an ethical lawyer should strive to be. He is portrayed as a money-hungry individual who views the legal system as a pliable tool, and who is willing to break any rule that stands between him and the possibility of attaining personal gain. Notwithstanding his departure from the fundamental ethical duty of an attorney, in *Breaking Bad* Goodman appears to always bring common sense to his desperate clients and to provide them with practical advice. He is also swift in helping them cover their tracks, launder their money, and avoid being caught. On occasion, Goodman is shown condoning or even supporting illegal behavior. His intermediation is not only between his clients and the state, but, more importantly, between the official legal system and the underworld, which puts him alongside similar characters like Tom Hagen from *The Godfather* trilogy. The difference between Goodman and Hagen, however, is that the latter worked exclusively for the Corleone family as their consigliere or advisor, whereas Goodman is an independent lawyer with multiple clients and an elastic sense of loyalty.

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that depends on the circumstances. The effectiveness of both Hagen and Goodman rested on their capacity to navigate between the official legal system, which they formally vowed to defend as licensed attorneys, and the world of crime where their clients and their business associates routinely operated. Saul Goodman is obviously an over-dramatized character whose exaggerated unethical behavior ridicules lawyers. The fact that he never gets caught makes the official legal system appear inept and ineffective, although it also raises an occasional giggle from viewers with a dark sense of humor. Throughout the first season we learn that prior to becoming an attorney Jimmy was a grifter with no promising future in sight. While trying to recruit clients, Jimmy becomes aware of a possible multimillion-dollar fraud committed by the owners of the nursing home Sandpiper Crossing against its residents. Despite having been given several opportunities to become a respectable attorney and therefore staying inside the legal system and within the law, Jimmy never stops engaging in unethical and fraudulent behavior. Most of his illegal actions appear to be well intentioned, or in pursuit of a laudable goal, but the fact that Jimmy carries them out in total disregard of the law puts the spectator in a quandary. In other instances, Jimmy reveals himself to be a very effective negotiator, like in the scene when he persuades drug kingpin Tuco Salamanca to break one leg of each of his con artist associates, Lars and Cal, instead of killing them. The contrary happens in *Breaking Bad* where the presence of the official legal system is much more salient. This is not surprising given that illicit drug trafficking is an essential part of the story. Unlike some other law-related shows that tend to highlight the flawed side of the official law enforcement by showing police abuse, corruption, and inefficiency, almost none of that occurs in *Breaking Bad*. Aside from Schrader and his colleague Steven Gomez, who is killed while on duty, none of the characters playing law enforcement roles become known for their heroic actions, as routinely occurs in shows of this nature. Every law enforcement character in the series seems to perform their job normally and, with the exception of Schrader, their lives are unremarkable. In other words, they stay both inside the legal system, and act within its principles. *Breaking Bad* has been dubbed one of the highest rated television shows of all times. During the years when *Breaking Bad* was aired in the United States between and , the series won more than one hundred industry awards, including sixteen Primetime Emmy Awards, two Peabody Awards, and the Writers Guild of America Award for Television for two consecutive years. Because of its focus on the illegal drug trade and other related problems, the series also stirred a public debate about its potential pernicious effect on American society. One prosecutor, for example, blamed the show for glorifying the manufacturing and trafficking of methamphetamine [16] , one of the most harmful illegal drugs in the United States. White launched his dangerous venture in partnership with a former student, Jesse Pinkman, an amateur drug dealer with contacts in the underworld. Instead of revealing his real identity to the members of the underworld, Walter introduced himself as Heisenberg.

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