Boston University School of Law

Scholarly Commons at Boston University School of Law

Books

10-2020

Law and Popular Culture: A Course Book (3rd edition)

Jessica Silbey

Michael Asimow

Follow this and additional works at: https://scholarship.law.bu.edu/books

Part of the Entertainment, Arts, and Sports Law Commons, and the Film and Media Studies Commons

CHAPTER 1

Introduction to Law and Popular Culture

1.01 What this book is about

This book is meant as the reader for a course with the general theme of "Law and Popular Culture."[1] It is suitable for undergraduate and graduate classes or seminars in American studies, criminal justice, political science, film studies, or other academic programs, as well as in law schools. Therefore, it provides material on the study of popular culture that may be unfamiliar to most law students, as well as material on law, lawyers, and the legal system that may be unfamiliar to most non-law students. Each chapter, with the exception of this introduction, consists of readings based on a particular film or television show that students should view before class discussion begins. (In some classes, the films are viewed outside of class; in others, they are viewed at the beginning of the class). Individual instructors, of course, can substitute different films or readings for those suggested.

1.02 Definitions of "popular culture" and "popular legal culture"

This book frequently uses the words "popular culture" and "popular legal culture." What do we mean by these vague terms?

1.02.1 The double meaning of "popular culture" and "popular legal culture"

We use the terms *popular culture* (often shortened to "pop culture") and *popular legal culture* in this book in *two distinct ways* (see Friedman 1989). These might be

[1] The authors have prepared a teacher's manual which is available from the publisher for use by instructors. To request the manual, please email Michael Asimow asimow@law.ucla.edu or michael@asimow.com or Jessica Silbey j.silbey@northeastern.edu or request it from the publisher.

Electronic copy available at: https://ssrn.com/abstract=3864439

called the "macro" and "micro" meanings of these words (or, if you prefer, the "broad" and "narrow" meanings).

According to the "macro" or "broad" approach, the term "popular culture" means all of the knowledge, behaviors, beliefs and attitudes possessed by people in a particular society or subgroup of that society. Using a similar macro meaning, *popular legal culture* refers to everything people know or think they know about law, lawyers, and the legal system. We frequently have the macro meaning in mind when we use the term "popular culture." For example, we sometimes hear that America has a For example, we sometimes hear that America has a "culture of consumerism," meaning that there are many people whose values and behaviors center on buying and owning consumer products. As another example, the U. S. Supreme Court said that *Miranda* warnings have become "part of our national culture." (See ¶1.05.1) The Court might have used the words "popular legal culture" instead of "national culture," because it was referring to what everybody knows (or thinks they know) about the warnings that police must give suspects after they are arrested.

The "micro" or "narrow" approach is quite different. Under the micro approach, "popular culture" means media *products* (whether in the form of films, television, print publications, music downloads, stage plays, and so on) that are manufactured and marketed for popular consumption. We use the micro definition when we say that people consume a lot of pop culture, meaning that they watch a lot of television or movies. Again using the micro approach, "popular legal culture" means media products about law, lawyers, or the legal system.

1.02.2 Popular culture and high culture

Electronic copy available at: https://ssrn.com/abstract=3864439

There is a well-understood distinction between "popular culture" and "high culture." Popular culture (using the micro approach set out in ¶1.02.1) covers commercially produced works intended for the entertainment of mass audiences. Pop culture producers assume that consumers will enjoy and quickly forget these works. In contrast, "high culture" refers to works that are produced and marketed for consumption by elite rather than popular audiences. For example, high culture incorporates classical music and opera, paintings and other works of visual art, poetry, or serious fiction—usually older fiction that has succeeded in being recognized as literature. Works of high culture are intended to have lasting rather than merely transitory value. Generally, the production of works of high culture is less collaborative and commercial than the production of works of popular culture. However, many works that were originally produced as mass entertainment are later promoted to high culture status such as the novels of Charles Dickens or Mark Twain, the stories of Edgar Allen Poe, or the plays of Shakespeare. Perhaps detective stories by Arthur Conan Doyle and Raymond Chandler have also made the leap into the sort of high culture studied in serious literature classes.

Countless academics have researched and taught about high culture, as if it were the only kind of cultural product that counts. Other academics have scorned popular culture as escapist trash that imparts false consciousness to the masses while capturing profits for its producers. Today, however, a large number of scholars take popular culture seriously and subject it to the same sort of critical analysis that is traditionally accorded to high culture. For example, TV shows like *Breaking Bad, The Wire*, or *The Sopranos,* or movies like *The Godfather,* that were originally intended as mass entertainment, are now the subject of serious scholarly inquiry. Numerous academic

Electronic copy available at: https://ssrn.com/abstract=3864439

journals and associations focus on pop culture products and many undergraduate and graduate courses and seminars concentrate on various aspects of pop culture. This book applauds that movement and seeks to join it by focusing on popular *legal* culture which is a small slice of the academic pop culture universe.

1.03 Why a course in law and popular culture?

In the preface to this book, we argued that both law and popular culture pervade nearly everyone's life. Therefore a course or seminar devoted to the interface of law and pop culture in our society is relevant and useful to students. As the preface also argued, students bring with them literacy in popular culture and familiarity with visual culture. As a result, students feel comfortable engaging in lively class discussions of particular films or television shows.

First, as to law: American courts rule on nearly every major question of social policy and, with the rise of constitutional courts worldwide, this is true of many other countries as well. The United States has more lawyers per capita (over 1.3 million at last count) and more litigation than almost any other country. It also has the unenviable distinction of confining more people in penal institutions than any other country. The U.S. has about 4.4% of the world's population but 22% of the world's population of incarcerated persons. Its incarceration rate of 716 per 100,000 persons is the highest in the world..[2]

Indeed, law pervades and structures all social relations. As Paul Kahn wrote: "We experience the rule of law not just when the policeman stops us on the street or when we consult a lawyer on how to create a corporation. The rule of law shapes our experience of meaning everywhere and at all times. It is not alone in shaping meaning, but it is rarely

[2] Wikipedia, "United States Incarceration Rate."

Electronic copy available at: https://ssrn.com/abstract=3864439

absent." (Kahn 1999, 124). For example, many highly personal decisions relating to sexuality are reduced to legal questions: Are LGBTQ people protected from job discrimination? (See ¶13.07.4) Can a lesbian retain custody of her child? Can she adopt a child? Can someone who has cohabited without getting married assert legal rights when the relationship breaks up? Thus everyone needs to know about the legal system, what lawyers do, and how courts and other legal institutions work.

Second, as to popular culture: Popular culture is even more pervasive than law. Virtually everywhere in the world, people are subjected to a torrent of sounds and images designed to entertain them, mold their opinions, and persuade them to buy things. Vital political, social, and economic issues are reduced to the flood of images on their television or mobile-device screens. Almost everyone is accustomed to spending large amounts of their precious leisure time seeking information and pleasure from consuming media, instead of exercising or reading, to name just two possible uses of that time. The average household consumes about 4 hours 27 minutes of television per day. This figure masks a large age difference. Adults over 65 watch TV an average about 7 hours 15 minutes hours per day, while adults 18 to 34 average 1 hour 54 minutes per day (perhaps they spend more time on their smartphones).[3] We hope that film or a TV show will help us experience particular emotions and sensations (such as laughing or crying or being scared, angry, or aroused) without the risk of really feeling these emotions.

The pervasiveness of popular culture seems to be accelerating with the vast multiplication of channels available on television, new methods of consumption (such as streaming video, mobile devices, laptops, or DVRs). and the infinite quantities of information available in cyberspace. A large amount of this material is popular *legal*

[3] https://www.statista.com/chart/15224/daily-tv-consumption-by-us-adults//

Electronic copy available at: https://ssrn.com/abstract=3864439

culture in the form of countless movies and television shows about law and lawyers. Most people who read this book have already spent thousands of hours in movie theaters and in front of their computers or television sets, reading popular novels, surfing the net, or hearing popular music. All of this incessant media consumption produces important effects in those who consume it and in society generally. Everyone needs to know more about popular culture in order to be able to better understand its implications and effects and to criticize and deconstruct it where necessary.

As James Snead wrote, "we have to be ready, as film-goers, not only to see films, but also to see through them; we have to be willing to figure out what the film is claiming to portray, and also to scrutinize what the film is actually showing. Finally, we need to ask from whose social vantage point any film becomes credible or comforting, and ask why." (Snead 1994, 142)

While all forms of popular culture are important and instructive, this book focuses on feature films and television about law and lawyers, as opposed to other media like documentaries, music, stage plays, novels, video games, or comic books. This approach is largely employed for reasons of pedagogical convenience—DVDs of films and TV shows are easily available for rental or purchase (and increasingly available through streaming services) and thus are convenient objects of classroom study. Besides, we had to impose an arbitrary boundary to keep the subject under reasonable control.

This book does not attempt definitive discussion of literary or cultural or film theory[4] or definitive discussion of topics in law and legal theory. We draw on theoretical material when we believe it will be helpful to teachers and students in discussing and

[4] For accessible and enlightening treatments of film and cultural theory see Gitlin 2002; Grossberg et al. 2006, chapters 5-6; Staiger 1992.

Electronic copy available at: https://ssrn.com/abstract=3864439

understanding the interface between law and popular culture. The book is intended for a diverse group of academic programs, both graduate and undergraduate, taught by instructors of diverse background and interests. Extensive treatment of any particular set of theoretical materials would make the book much longer and probably less useful for most of its readers. We anticipate that particular teachers will enrich class discussion by drawing on their own preferred theoretical orientation (and they may wish to add supplementary written materials to enhance such discussions).

1.04 **The relationship between popular culture and the law**

Popular legal culture has a complex relationship to law, lawyers, and the legal system. The relationship might be expressed as a feedback loop—that is, law affects pop culture and pop culture affects law. (See ¶1.05.1 for further discussion)

1.04.1 Popular culture as reflection

Popular culture in the micro sense (see ¶1.02.1) *reflects* popular culture in the macro sense.[5] In other words, works of popular culture often illuminate what real people actually do and believe. For example, TV commercials attempt to tap into our consumerist attitudes and sexual fantasies as well as our social, physical, and economic anxieties— while also trying to change our buying habits. (Mittell 2010, ch. 2) Thus pop culture is likely to reflect the dominant ideologies of society, such as consumer capitalism, gender roles, or commonly shared stereotypes.[6] Similarly, the works of popular *legal* culture reflect what people generally believe about law, lawyers, and legal institutions.

---

[5] See Mittell 2010, ch. 8.

[6] "Film is a powerful repository of maps of social life, of common-sense knowledge, and can give us insight into persistent contemporary struggles about the organization of gender in family and social life." (Johnson 2005, 187, internal quotation marks deleted).

Electronic copy available at: https://ssrn.com/abstract=3864439

Of course, popular culture in the narrow sense is never a perfect reflection of popular culture in the macro sense. Works of popular culture are informed by a variety of factors—everything from the commercial constraints under which they are produced, the economic interests of those who pay for them, and the ideological bias of their creators—that complicate their relationship to popular culture in the macro sense. Pop culture producers always distort reality, including the operation of the legal system, for dramatic, commercial, or ideological purposes. Nevertheless, popular culture, in the narrow sense, can still tell us a lot about popular culture, in the broad sense. For example, if movies usually show lawyers who are greedy and dishonest, this is evidence that many people share this view—or, at least, that filmmakers believe that they do. Similarly, old movies can tell us a lot about subjects such as police practices or gender and family relationships of earlier times.

1.04.2. Media effects

Popular culture in the micro sense powerfully *changes* popular culture in the macro sense. The consumers of works of popular culture are affected in ways that go far beyond entertainment or pleasure. To take the most obvious example, commercials change the buying habits of consumers as they "learn" information about new products or retailers. More relevant to this course, most people "learn" most of what they know (or think they know) about law and lawyers from consuming popular legal culture. Indeed, pop culture often invites viewers to work as surrogate police, jurors, judges, and lawyers, allowing them to vicariously experience and learn about the legal system from the inside. People learn details of law practice (such as that people address the judge as "your honor") and broader and contestable notions about law and justice (such as that the jury

Electronic copy available at: https://ssrn.com/abstract=3864439

system delivers justice or that cross-examination is a useful way to ferret out the truth).

But it's important to realize that people are learning from a highly unreliable source, because the media of pop culture consists of fictitious stories made up to entertain them. Pop culture products are often wildly out of sync with reality. Just to identify a few of the most frequent whoppers in the area of law, the police don't pursue, much less catch, most criminals; over 90% of criminal cases are plea bargained rather than going to trial; trials occur months or years after the crime, not the next week; lawyers are far more concerned with earning fees than pursuing justice; and lawyers can't give speeches while cross-examining witnesses.

Viewers may passively accept the messages that are spoon fed to them by pop culture or they may resist those messages and form their own interpretations of the material. (See ¶1.05.5) Either way, whether the viewers are passive or active in their consumption of pop culture, they are using pop culture materials to *construct* their personal views of reality (including the reality about law and lawyers). The ways that popular culture in the narrow sense helps to construct popular culture in the broad sense is an important and controversial subject that is discussed in greater detail at ¶4.04.

1.04.3 The cultural study of law

A study of popular culture can help us understand law and law practice differently from the way we would understand it by going to law school or by reading books or articles about law. For example, the highly successful series *24* presented the view that the use of torture in interrogating suspects in emergency situations is both legal and effective, regardless of the actual law on the subject (which forbids torture). The show may well have made torture more acceptable to the public than it otherwise would have

Electronic copy available at: https://ssrn.com/abstract=3864439

been. The film *Zero Dark Thirty* (2012) reinforced this message. In this respect, *24*and *Zero Dark Thirty* form part of a long tradition of the glorification of vigilante justice, cowboys, rogue police, and superheroes in pop culture.[7]

This book views law from a *legal realist* perspective, meaning that law is what judges, jurors, lawyers, legislators, police, and others involved in making or applying the formal law *actually do* as distinguished from what the law books say they *should do.* This is often called "law in action" as opposed to "law in the books." A legal realist might say that if many lawyers engage in ambulance chasing and get away with it, the ethical rule against ambulance chasing isn't really law at all. (See ¶4.05.2). What these lawmakers and law appliers *do* depends on what they *believe*; and what they believe is heavily influenced by their own experiences and perceptions of the world outside the law, including the popular legal culture they have consumed. Thus, legal realists seek to understand how the formal law is actually applied on the ground and why and how it changes. They care about the informal ways that people resolve legal disputes rather than going to court. Legal realists consider many factors outside the formal written law, including popular legal culture. (Friedman 1989). For these reasons, the works of popular culture can and should be studied as legal texts—as authoritative in their own

[7] See Manderson 2011. Manderson points out that long before the advent of modern communication technologies like film or television, popular culture in the form of songs, oral stories, and pagan rites formed a site of resistance to formal law. He also observes that Justice Antonin Scalia of the U. S. Supreme Court gave a speech in which he specifically drew on the use of torture by Jack Bauer on *24* to argue that torture was legal in certain circumstances. (Manderson 2011, 39) In commenting on Manderson's paper, Carodine offers additional examples of prominent figures in government and academic life who refer to Jack Bauer to justify torture. (Carodine 2011, 54-56)

Electronic copy available at: https://ssrn.com/abstract=3864439

way as the more familiar written texts like case law and statutes. We call this the *cultural study of law*, and we believe it can be valuable to students and lawyers alike.[8]

In many situations, seeing movies or TV shows about law and lawyers can place legal issues or issues of professional practice in a different perspective. Pop culture gives us indelible role models of good and bad lawyers. (See Hermann 2012; ¶4.03) Pop culture can alert us to real problems in the legal system, such as unethical behavior by lawyers or judges, or the many ways that law fails to deliver justice.[9] Do we feel differently about the insanity defense after seeing *Anatomy of a Murder* (discussed in Chapter 2)? About the death penalty after seeing *Dead Man Walking* (chapter 11)? About the tort system after seeing *A Civil Action* (chapter 12)?

1.05 The (many) meanings of cultural texts

This subsection introduces some basic principles of cultural theory that are drawn on throughout the book.

1.05.1 The feedback loop between law and popular culture—Miranda *and* Dragnet

As previously mentioned (¶1.04), there is an important feedback loop (sometimes called "interpenetration") between law and popular culture. Law influences pop culture and pop culture influences law. An example of this is the relationship between the *Miranda* decision and *Dragnet.*

The U.S. Supreme Court's decision in *Miranda v. Arizona* (1966) established that

[8] For treatment of the cultural study of law, see Kahn 1999; Berman 2001; Sarat & Simon 2001; Binder & Weisberg 1997; Reichman 2008.

[9] Austin Sarat and his co-authors argue that pop culture casts a "side shadow" on the law by showing it from a new perspective. "The moving image attunes us to the 'might-have-beens' that have shaped our worlds and the 'might-bes' against which those worlds can be judged and toward which they might be pointed…It opens up largely unexplored areas of inquiry as we chart the movement from law on the books to law in action to law in the image." Sarat, Douglas & Umphrey 2005, 1-2.

Electronic copy available at: https://ssrn.com/abstract=3864439

persons in police custody can remain silent and consult an attorney before being questioned. They must be warned that anything they say can be used against them and that if they can't afford an attorney, one will be appointed for them. Many people thought that the Supreme Court would overrule *Miranda,* but they were wrong. In *Dickerson v. United States* (2000), the Supreme Court reaffirmed *Miranda.* Chief Justice William Rehnquist insisted that the *Miranda* rights not only rested on firm constitutional foundations but were "part of our national culture." The *Dickerson* opinion is an example of the feedback loop or interpenetration of law and culture in America—a legal decision (*Miranda*) found its way into film and television which in turn created a popular culture usage (using culture in the broad sense referred to in ¶1.02.1); that cultural usage then has an impact on the law (*Dickerson).*

[EDITOR: Put the photo of *Dragnet* around here. The photo caption should say: Figure 1.1. *DRAGNET*—Sgt. Joe Friday (Jack Webb) and Officer Frank Smith (Ben Alexander) analyze the evidence. NBC/Photofest. ©NBC.]

Dragnet was initially a hit TV show during the 1950s, and it returned to the network schedule in 1967, a year after *Miranda*.[10] Many believe it introduced *Miranda* rights into "our national culture." *Dragnet's* creator and star, Jack Webb, insisted his program mirror the actual procedures of the Los Angeles Police Department, whose case files provided the material for the weekly episodes. Consequently, Webb's character, Sergeant Joe Friday, and his partner informed everyone they arrested of their *Miranda* rights. Other TV programs and films followed suit, thus entrenching in popular culture

[10] For discussion of *Dragnet,* see Lenz 2003, 86-91. You might watch a *Dragnet* episode at http://www.hulu.com/watch/501. It's about the LSD menace. Do you find it realistic? Or just campy?

Electronic copy available at: https://ssrn.com/abstract=3864439

the notion that suspects must be told their *Miranda* rights.[11] *Dragnet* scripts had to be approved by the LAPD, in return for which it provided free squad cars and police to serve as extras. The result, of course, was a product that whitewashed the LAPD, erasing any mention of its notorious racism, corruption, illegal searches, and police brutality. (See Rosenberg 2016)

1.05.2 The process of meaning-making—signifier and signified

The interpenetration of legal practice and visual media is not a new phenomenon. Artistic depictions of the Roman goddess Justitia, for example, have long provided a popular visual image of the relationship between law and justice.[12] Justitia is usually portrayed as a blindfolded woman with an unsheathed sword (to symbolize the state's power) in one hand and a scale (to represent the goal of fairly measured justice) in the other.

[EDITOR: insert photo of Justitia around here. Caption: Figure 1.2. *JUSTITIA:* Justitia's blindfold, sword, and scales symbolize our expectations of justice. Gravensteen Castle, Ghent, Belgium. ©Merrie Asimow, 2012]

The field of semiotics concerns the process of "signification," which is often referred to as "meaning-making." In semiotics, images like Justitia are referred to as "signs." A sign is treated as the basic building block of human communication. Each sign contains two parts. The first is the *signifier*, the image, word, or sound (or, as in the case of films and TV shows, the combination of these) that people encounter. The *signified*, the other half of the sign, refers to the various possible meanings that a signifier generates

[11] See Steiner, Bauer & Talwar (2011) which chronicles the appearance of *Miranda* warnings in various police and legal shows. *Miranda* warnings appear less frequently in contemporary police and forensic shows than in years past.
[12] See Resnik & Curtis 2000, 160-64; Resnik & Curtis 1987, 1754-64.

Electronic copy available at: https://ssrn.com/abstract=3864439

as it circulates among readers and viewers.

In most cases, people expect that others will comprehend the meaning of commonly used signs. The producers of TV commercials, for example, assume that every viewer will understand that the visual image of a car signifies a real-life "car," a four-wheel machine in which people move around. This type of association, which is called *denotative*, produces straightforward, literal meanings that are widely shared. Viewers make sense of signs through the use of codes which are systems of meaning that help the viewer to organize and understand the world. Thus, to make sense out of the car commercial, the viewer relies on a code of commercials (that explains that somebody is trying to sell you something) and a code of transportation equipment (that distinguishes cars from skateboards).

The denotative meaning of a statue or picture of Justitia is simply that of a blindfolded woman holding a scale and brandishing a sword. But the image of Justitia produces another kind of association that is called a "connotative" meaning. For example, the image might mean that our justice system is powerful but also fair and impartial. Connotative meanings involve a far wider range than denotative ones. More importantly, these connotative meanings proliferate and overlap as signs come together to make up a written or visual text. The connotative meanings of a visual text often stimulate controversy—or, as students of visual culture like to say, the construction of meanings takes place on contested terrain.

1.05.3 Justitia's blindfold

The story of how visual renditions of Justitia changed over time provides a good example of the way in which the connotative dimension of meaning-making is a

Electronic copy available at: https://ssrn.com/abstract=3864439

contested, social/cultural/historical process. In the middle ages, Justitia usually lacked a blindfold. Addition of a blindfold during the fifteenth and sixteenth centuries signified important changes in—and conflicts over—the legal systems of Western Europe. Initially, the blindfold over Justitia's eyes may have connoted a *critical* message—the legal system was using force without considering all sides of a dispute. The law unleashed the sword, this new image of *blinded justice* suggested, to serve the interests of the powerful against the powerless.

This same image, however, could also carry a positive meaning—that law was impartial, blind to differences in rank and status. Even though the critical meanings never disappeared, images of blind justice became a familiar sight in town squares and public buildings during the sixteenth and seventeenth centuries and increasingly signified that a modern legal system would treat everyone equally.

1.05.4 How do films and TV shows produce contested meanings?

When *Dragnet* showed the LAPD advising suspects of their *Miranda* rights, it joined an ongoing process of signification that extends into our own times—and beyond. To some TV viewers of the late 1960s, the set of signs that appear in a scene involving a *Miranda* warning might mean that the police were following the law. In addition, because the program claimed to realistically depict police work in the City of Angels—"only the names have been changed to protect the innocent" the show's famous voice-over claimed—the image of the Miranda warnings could plausibly be seen as another sign of *Dragnet*'s "authenticity."

However, this same text, and the series of signs that it contains, could have produced quite different meanings. Even during the 1950s, *Dragnet* attracted comedic

Electronic copy available at: https://ssrn.com/abstract=3864439

interpretations. A hit record by the satirist Stan Freeberg lampooned the program's minimalist, staccato-like dialogue such as "book him on a 385." Some viewers could interpret *Dragnet* ironically, as more of a satire than an accurate reflection of law enforcement practices. The show would be enjoyable and funny precisely because it seemed so silly.

The comic connotations became more prominent when *Dragnet* returned to network television in 1967. Joe Friday, whose whole life apparently involved bureaucratic police routines, often seemed, especially to younger viewers, as out-of-touch with the freewheeling cultural values and practices of the late 1960s. A biography of Jack Webb, entitled *Just the Facts, Ma'am* (invoking a line of dialogue used constantly by Sergeant Friday), suggests that *Miranda* warnings appeared so often that some viewers likely interpreted them as ridiculing, rather than reflecting, the LAPD's practices. (Moyer & Alvarez 2001)

Subsequently, it became even more difficult to see *Dragnet* as a serious police drama. A 1987 motion picture version that starred Dan Ackroyd as Joe Friday was a flat-out comedy. (Tom Hanks plays a bumbling cop in this film which includes a rap version of *Miranda* rights) Later, as the actual LAPD appeared permanently mired in controversy and corruption, *Dragnet* attracted a new set of comical connotations when it circulated in re-runs. In fact, TVLAND, the "retro" cable channel, which regularly featured the 1967–71 episodes, surrounded them with tongue-in-cheek promotional spots that cued viewers to watch *Dragnet* as a parody of the law in action. Although *Dragnet* had become a source of parody, some people think the basic concept retained its dramatic power. In 2003, Dick Wolf (the successful producer of *Law & Order* and its numerous

Electronic copy available at: https://ssrn.com/abstract=3864439

spinoffs—see Chapter 8) brought a serious and updated version of *Dragnet* back to television. Once more Sgt. Jack Webb tells suspects and witnesses "just the facts, ma'am." The show lasted for two seasons.

As the example of *Dragnet* suggests, media texts, and the signs within them, are often transformed by changing circumstances.[13] Viewers watching a 1970 episode today will instantly identify it, as a result of clothing and automobile styles, as "history," a set of signs from the past. However, at the same time, *Dragnet* remains, in all of its many connotations, part of our present (and perhaps our future) culture as well. Most importantly, *Dragnet* and all of the other legal films and TV shows about law in circulation today rely on a historically rooted set of media forms and practices that go back to the earliest days of the movies. These forms and practices (discussed in ¶1.06.2) continue to shape what viewers expect to encounter in a legally themed film or TV show.

1.05.5 Viewer-response theory

In reader-response theory, the consumers of a text construct their own interpretation of that text. This approach (labeled "viewer-response" in the case of visual media like film or television) rejects the claim that anyone, including the authors or creators of an item of popular culture, know some "correct" way of interpreting it, or deciding "what it is about," or "what it means." (Fish 1980; Staiger 2002; Morley 1992). Any text both invites and yields more than a single, authoritative meaning. As a result, the meaning encoded by the creator of a text may be entirely different from the meaning decoded by spectators. Reader- or viewer-response analysis is common in cultural studies; numerous writers have sought to determine empirically the responses of

[13] For another example of the revival of familiar symbols that are revived but transformed by changing taste and culture, see discussion of *Perry Mason,* ¶7.02.1.

Electronic copy available at: https://ssrn.com/abstract=3864439

particular spectators to particular texts. (We discuss viewer response theory further in ¶4.04.6.)

How a person is likely to interpret a text, and make a rational or emotional connection of that text to his or her own life, depends critically on such factors as the person's class, race, gender, or political views, the other texts that the person has previously consumed, the viewer's expectations and mood, and the time and place that the interpretation occurs (Staiger 1992, 2000). Feminist writers, for example, often argue that men and women are likely to interpret texts such as films differently and complain that critics often privilege a phallocentric or male-centered reading. (For additional discussion, see ¶10.06.7) Some viewers will interpret a film in accordance with the purportedly "dominant" view, one based on a conservative ideology that the way things are is the right way. Others will interpret it in accordance with a "resistant" view, one based on an ideology that would change the existing power relations of class, race, sexuality, or the like. Some may interpret it seriously, others ironically, so that the meaning is the opposite of what the filmmaker may have intended.

Thus, according to David Papke (1996a), Frances Ford Coppola intended in *The Godfather* (1972) to challenge the myth that the United States lived by the rule of law and enjoyed an economic system that provided opportunity to all. Instead, Coppola intended *The Godfather* to present the lawless and criminal Corleone family as a symbol for the American legal system and its ruthless and predatory business practices as a metaphor for capitalist America. However, viewers interpreted the films in a manner that resisted Coppola's intention. They believed that it celebrated the mythic family and old-fashioned notions of community. Vito Corleone's story, they thought, illustrated that a poor man,

Electronic copy available at: https://ssrn.com/abstract=3864439

through drive and diligence, could become successful. They approved of the apparent endorsement of power over law. Since police are on the take, judges in the Mafia's pocket, and lawyers make offers that cannot be refused, the Corleone family's violent version of justice seemed appealing. In his public statements, Coppola expressed disappointment that viewers took from his film a meaning that sharply contradicted the intended meaning.

Viewer-response theory argues against trying to find any universal standard for evaluating arguments about the possible meanings of a text. Stanley Fish (1980) argues that "interpretive communities," whose members share similar educational and experiential backgrounds, tend to ascribe similar meanings to a given text. Nevertheless, such communities may be unable to persuade others of the "truth" of their view. People, in short, can make valid and interesting judgments about the nature of the cultural and legal texts concerning law or any other institution or social practice, without believing that everyone else must assent to their views. We have tried to take that fundamental insight seriously in this book, leaving to our readers—and our students—the responsibility of interpreting the many cultural texts we will be discussing.

1.06 Filmmaking and reality

1.06.1 Micro and macro reality

Most audience members at mainstream movies and most consumers of TV shows expect to experience a sense of realism or verisimilitude, meaning that the story should ring true. This means that the story should feel as if it could actually happen in the world. The characters should behave and react emotionally like people the viewer recognizes. For that reason, most movies and TV shows adopt a naturalistic method of

Electronic copy available at: https://ssrn.com/abstract=3864439

story-telling. Of course, horror or fantasy stories or cartoons are not designed or expected to feel realistic, and some viewers don't care about verisimilitude. They seek an emotional response or have something different in mind altogether.

All of us recognize that what we see in the theater or on TV is not "reality." We know that filmed images are not the same as people and events in the real world. The events of real life (like courtroom trials) are simplified, streamlined, and amped up for the purposes of entertainment and to fit the required time slots. We see only what the filmmaker chose to put in front of the camera, edited to create artificial views of reality (like cutting back and forth between people having a conversation) and condensing many hours of film down to two hours or so, and a shorter period for TV episodes. We know that the film or TV show was probably filmed on a set, not in the place where it pretends to be located.

Still, if the film or TV show is successful in imparting a sense that it is realistic, something magical occurs: We "suspend disbelief" and pretend that the story involves real people with real emotions experiencing real events. Indeed, because of the large size of a movie screen and the skillful direction, music, and acting, a film may seem more real than just real. We experience an emotional, an "affective," response. We identify intensely with the characters; we weep when terrible things happen to the good guys and rejoice when bad things happen to bad guys. Because we make believe that these stories are true, skillful filmmakers can feed us their version of history, or their political or ideological point of view, and we may accept it because it all seems so realistic.

Increasingly, creators of film and television series deliberately introduce anti-realistic material and viewers have been willing to accept it. For example, the innovative

Electronic copy available at: https://ssrn.com/abstract=3864439

TV show *Ally McBeal* (see ¶7.04) featured a young lawyer with an unhappy personal life. Episodes of *Ally McBeal* repeatedly made use of animated sequences that were designed to inform viewers about what Ally was feeling. A recurrent motif on the show was a cartoon of a dancing baby, intended to illustrate Ally's concern that her biological clock was ticking.

Pop culture stories are never "realistic" in the sense that they exactly or even approximately reproduce reality. We should not criticize them for failing to do so. (See Elkins 2004, 845-49; Elkins 2007) However, the authors of this book believe that pop culture stories should tell larger truths, even if they manipulate reality to entertain us or to satisfy the constraints of the medium. The film should be authentic in the macro sense—that is, the big picture—even if it can never be realistic in the micro sense. If we're lucky, the film might even illuminate mythic or psychological truths of much larger scope. (Denvir 2011)

We also think there is pedagogical value in pointing out how pop culture products depict law and lawyers in ways that depart from objective reality. It is interesting to observe these differences and ask why they have occurred. Is it ignorance by the filmmaker or is it a need to entertain by exaggerating or falsifying the reality? Often, we can understand the world of law practice better (for example, the world of law firms discussed in ¶¶4.08.1, 13.05) when we see how that world is depicted in pop culture—even though such portrayals are wildly exaggerated or flat out wrong. Finally, millions of viewers are learning about law and lawyers from what they see in fictitious movies and TV shows. (¶¶1.04.2, 4.04) We need to know what kinds of misinformation the public is absorbing.

Electronic copy available at: https://ssrn.com/abstract=3864439

As we discuss in ¶8.09, the subject of "realism" in film is quite complicated. Ideas of what is realistic in movies have changed greatly over time. Realism often turns out to be more a matter of style and filmmaking technique than actual fidelity to events and characters in the real world.

1.06.2 Making legal films and TV shows seem "real"

Films and TV shows tell stories by making constant use of narrational and visual *conventions* that are specific to the particular genre in which the pop culture product is situated. For instance, the *establishing shot* for a trial film or TV show usually comes from a considerable distance away from the action (i.e., a *long shot*) and often looks upward at a courthouse or a courtroom. The judge usually is introduced in a similar, upwardly tilted long shot. This form of representation helps to certify the authority of courts and judges.

Once a long shot has established the *represented space* in which the trial narrative will unfold, a film or TV show uses the standard shot-scale and changes in *camera angles* to tell a story. Moments of high drama and acute tension are signaled through *closeups*, which are supposed to reveal a character's private, emotional state. The sudden swelling of a musical soundtrack adds a cue about the intended meaning of a certain shot. By changing the angle from which the camera shoots characters and situations, the filmmaker provides additional cues about what is going on. Film and TV viewers enjoy an *omniscient, god-like view* from which to observe the represented space and dramatic situations. In courtroom films, the camera is often positioned so that viewers seem to be watching from the jury box and hearing and seeing everything that the jury in the film hears and sees.

Electronic copy available at: https://ssrn.com/abstract=3864439

The actors engage in familiar behaviors. Lawyers interview clients in jail, cross-examine hostile witnesses in court, make impassioned closing arguments. All this contributes to a sense of verisimilitude. Indeed, everything that a viewer sees in the finished film, including characters, props, costumes, and sets, embellishes the sense of the reality of the story. Students of cinema refer to the framing of the picture, and of everything in it, as *mise-en-scene* (pronounced "mize on seen"). The mise-en-scene of a trial film, for example, generally imitates the arrangement of a typical courtroom: raised judge's bench, a reporter, a gavel, and a jury box with a rail. All these items are necessary to make us believe we're looking at a real courtroom rather than a set.

1.06.3. The editing process

In addition to the shot scale and the use of familiar sets and behaviors, film and TV reality depends on the conventions that regulate the editing process. *Editing* refers to the ways in which individual camera shots are spliced together or *cut* during post-production in order to make the final version of a movie or TV show. (See Mittell 2010, 195-202) (In the old days, two strips of film were physically cut and pasted together; today editing is done via digital technology, but the term "cut" is still used).

Film and TV producers favor *continuity* cutting. Continuity cutting tries to paper over the gaps in space or time between shots to achieve a sense of continuity, so that the finished film will appear seamless, natural, and realistic. They generally avoid "jump-cuts" which involve abrupt shifts from one shot to another unless the director wishes to disorient viewers. For instance, in cutting between two scenes in two different places at two different times, editors will sometimes use a similar gesture or action (such as a character lighting a match) to paper over the gaps or carryover the sound from one scene

Electronic copy available at: https://ssrn.com/abstract=3864439

into the next. (See ¶6.05.2).

Another editing technique known as *montage* splices together a series of brief, separate shots. (See ¶13.09.3) For example, montage could be used to show the testimony of a lengthy list of witnesses in a matter of seconds. Though obviously artificial (the witnesses may have testified over the course of several days), audiences accept this convention because it makes narrative sense (there's no point in showing the testimony of each witness) and because the characters are performing a similar action (that is, testifying) and this provides a sense of visual continuity. Further, by rapidly cutting from one witness to another, the montage may suggest that the prosecution has built an imposing case against a defendant.

Editing allows the compression of "real-life" time into "reel-life" time. A neatly dressed attorney begins to address an attentive jury. Abruptly, the film cuts to a shot of the same attorney, now disheveled, rambling on to a group of nodding jurors. Contemporary viewers do not need a printed insert telling them that "many hours pass" in order to understand what has been happening. The passage of time can also be shown through a *dissolve,* where a second shot is superimposed on the first one, or through a *fade out/fade in*, where the picture gradually darkens until it fades to black and then gradually brightens to a new shot. Fades are also used in cutting to commercials and from commercials back to the action in a TV show.

The editing process also heightens the sense of reality of conversations among characters through a convention know as the *shot-reverse shot system*. Rather than capturing two people talking to one another in the same shot, individual shots are edited so that the finished film alternates between characters. Two cameras film the action, each

Electronic copy available at: https://ssrn.com/abstract=3864439

focused on one of the two people talking. There will be a shot of one character talking and a reverse shot of the other replying. The shot-reverse shot convention provides viewers with a variety of different looks at the unfolding story while still enabling them to imagine that they are watching a real conversation.

1.06.4 Filmmaking today

The conventions outlined above still prevail. Virtually every film and TV production uses them. However, they have been supplemented by new ways of creating film and TV narratives. Digital equipment speeds the editing process, thus allowing for the densely edited films that audiences became accustomed to in the 1990s. Computer-generated graphics promote a more elaborate, more cluttered mise-en-scene because anything can be inserted into the final print.

The way in which viewers see film is also changing technologically, so that people often watch movies according to the rhythms of their own daily lives rather than in the darkened quiet of a theater. As viewers become more accustomed to a media-saturated environment, most films and TV programs have adopted a more frenzied, edgy pace than older Hollywood films. Images flow by with increased speed and viewers are expected to make meanings in much less time than did their parents and grandparents. See ¶¶2.08.2 and 2.08.3 for discussion of long takes which are typical of older films and TV shows and of quick cutting which is more typical of newer films and TV shows.

1.06.5 Intertextuality

People who consume a new legal pop culture product inevitably compare it to generically similar products they've consumed earlier. Similarly, they compare an actor's performance and persona with the actor's earlier roles. This phenomenon is

Electronic copy available at: https://ssrn.com/abstract=3864439

called *intertextuality.* Intertextuality occurs often in the world of popular legal culture. Because of the sheer volume of pop culture texts about law (film, TV, novels, etc.), people understand a new legally-oriented film or TV show text in light of earlier ones. See ¶9.02, which refers to intertextuality in *12 Angry Men.* The star of that film, Henry Fonda, acquires great credibility in his role because of his earlier roles and the movie is often referred to in later films or TV shows about the jury. The same is true for Paul Newman's role in *The Verdict* (see ¶4.01.2). Sometimes producers make use of intertextuality by explicitly referring to another text, as frequently occurs on shows like *The Simpsons* or *South Park.*

The process of intertextuality allows people to judge the authenticity and meanings of pop cultural texts such as *Suits* by comparing it to other law-related TV programs and movies they've seen. More importantly, intertexuality has begun to span the divide between "real" and "reel" legal institutions. People increasingly ask questions such as "why can't judges run trials like Judge Judy?" or "why don't lawyers give concise closing arguments like they do on *Law & Order*?" Media representations, in other words, sometimes provide the basis on which people evaluate the work of the law. Intertextuality is explored further in ¶3.03.2 and 4.01.2.

Electronic copy available at: https://ssrn.com/abstract=3864439