

“Popular Cultures and the Law: Introduction”

Special Issue Editors: Christy Collis and Jason Bainbridge

In Bristol, a breastfeeding mother is ejected from a pub on the grounds that she has brought a minor into a drinking establishment, and that a pub is no place for a ‘proper’ mother. In Austria, public strollers through the city square are confronted with the sight of supposed asylum seekers in a large container, and are asked to vote online, reality TV style, to evict the refugee of their choice from the country. In Queensland, legislators try to decide whether dead human bodies preserved through plastination, then dressed, posed, and exhibited are art or desecration. In the world of a Spielberg film, crimes are foreseen and averted before they actually occur. And in movie after movie, lawyers argue, judges pronounce, and courtrooms erupt into cheers or tears as cases reach their conclusion.

At first, these instances seem to bear little meaningful relationship to one another. However, as the articles in this special issue demonstrate, they all share a crucial common feature: all of these instances are moments or sites at which the ‘domains’—or cultural formations—of popular cultures and the law intersect and interpenetrate. Traditional disciplinary approaches to these two potent domains tend to segregate them sharply from one another, and thus to limit understandings of their mutual imbrication: accounts of the legal regulation of popular cultures, on the one hand, and studies of television representations of courtrooms, on the other, are certainly productive, but they too often maintain firm ontological barriers between popular cultures and the law. Further, traditional approaches such as these tend to reify two dangerous assumptions: that the law is somehow separate from culture (the idea of “legal closure” (Blomley, 1994, p. 14)); and that popular cultures’ legal work is restricted to fictitious representations of judges, lawyers, criminals, and the police.

It is only in the last twenty years that an academic trend has developed toward looking at law in the context of society as a whole, studying what the journal *law/text/culture* defines as ‘law’s textuality’, or the recognition of ‘both the texts and subjects which the law touches and shapes and which, in turn, impact on and change the law’ (1994, p. 6). Early examples of this trend include the Critical Legal Studies Movement (see Kennedy and Klare, 1984), feminist jurisprudence (see Graycar, 1990), Critical Race Theory (see Delgado and Stefancic, 1993) and ‘Law in Context’ studies (see Redhead, 1995, pp. 20-21) which saw the emergence of journals such as the *Journal of Law and Society* and the *International Journal of the Sociology of Law*. These primarily sociological studies gave rise to studies of law and popular cultures, first evident in the debates around law and popular cultures in the journal *Screen* and, since 1986, gathering momentum following the eminent legal scholar Lawrence Friedman’s insistence that ‘explorations of legal and popular culture, and the way they interact, should be high on the list of scholarly activities’ (Friedman, 1989, p. 1606). Currently, an online academic magazine of law and popular cultures exists (*Picturing Justice*) as does an entire library devoted to ‘the lawyer in popular culture’ at the University of Texas’ Tarlton Law Library.

To date, studies of law and popular cultures have predominantly been the work of legal scholars and can be classified into a small number of categories. The first of these are realist models which compare representations of lawyers in the media to ‘real’ life practice, as in Jensen (1992) Mashburn and Ware (1996) and Bergman and

Asimow (1996). Second are studies of the ways in which film and television alter public perceptions of the law; this category of analysis includes the works of Machura and Ulbrich (2001), Sherwin (2000), Diggs (1996), Gunn (1993) and Weidlich (1993). Third are historical studies tracing changes in media representations of lawyers, including those by Greenfield (2001B) and Thain (2001) (on film), Rosenberg (1994) (on television) and Robinson (1998) (on literature). A fourth group focuses its critical attention on texts outlining the ways in which film, for example, can be illustrative of particular legal issues (see Denvir 1996, Laster 2000, Greenfield, Osborn and Robson 2001, and Chase 2002). Denvir's use of the 1946 film *It's a Wonderful Life* as a way of interrogating the US Constitution (1996) is a notable example of this field of inquiry. Importantly, legal scholars' focus on media texts has led to the increasing use of movies as 'legal texts'--as teaching tools and objects of academic study—and not just courtroom dramas, but also Westerns, documentaries, and other 'genre' films that share a common central concern with law and justice (Bergman and Asimow 1996, Denvir 1996, Laster 2000).

Emerging from the uptake of popular cultural studies by legal scholars, and in response to the traditional disciplinary segregation of the two, two key assumptions animate the articles in this special issue: first, that law is cultural—'jurisdiction', as Ford points out, 'is a set of [social] practices, not a preexisting thing in which practices occur' (Ford, 2001, p. 203)--; and second, that popular culture intersects with the law in far more complex and constitutive ways than the representational. The emerging concept of 'legal consciousness', as Lieve Gies explains in her article, demonstrates the mutually-constitutive relations between popular cultures and the law. Legal consciousness, derived from Foucauldian understandings of the micro and macro tactics of power, asserts that law is not simply a set of rules in books (the "black letter" approach to the law) applied vertically to popular cultures; but rather, that law and popular cultures are in a horizontal relationship in which law is understood, articulated, contested, validated and ultimately brought into full existence through its practice and its negotiation in the everyday. Similarly, law is one of the technologies through which culture produces, defines, and maintains itself. Blomley explains this horizontality in his study of legal spatialities by making the point that 'rather than seeking to bridge the gap between law and [cultural] space, the argument here is that there is no gap to bridge' (Blomley, 1994, p. 37). Law and popular cultures, in short, are mutually-constitutive; the task for scholars now is to trace the products and the processes of their relationships.

The articles in this special issue thus do not set out to prove that law is essentially a cultural product, complete with all of culture's epistemological biases and asymmetries. Neither do they seek to demonstrate solely that popular media represent lawyers in accurate or inaccurate ways. These conclusions have already been arrived at by, respectively, the fields of Critical Legal Studies and Law-and-Film. The articles in this special issue take the next step on from these important understandings, and instead focus on the mutually-constitutive relations between law and popular cultures. In doing so, these articles arrive at some foundational questions: what exactly is law, if it is something beyond judges and courtrooms; how does law actually work; and what role does law play in the definition and maintenance of formations such as the body, art, space, humanity, and nationality?

A particularly useful feature of this special issue is that all of its contributors are legal scholars, working out of law schools. Two key strategies underpin the decision to highlight the work of legal scholars in *Continuum*. First, attending to legal scholars' work on popular and everyday cultures reveals to Cultural and Media Studies readers the ways in which concepts and theories such as audience reception, the everyday, embodied subjectivity, and spatial production are taken up by, and refracted through another, very different, discipline: the field of Legal Studies. Second, it signals the productive potential for further interdisciplinary encounters between legal and popular cultural studies by highlighting the stimulating outcomes of their analytical convergence. Legal scholars such as those featured in this special issue are increasingly insisting on the importance of popular cultural studies to their own field. As Lieve Gies argues in her article, legal scholars are finding methodologies and theories derived from Cultural / Media Studies—the active audience, for example—more and more useful to their understandings of the ways in which law works, and fails to work. A reciprocal uptake by Cultural / Media Studies scholars of legal insights—such as the concept of legal consciousness—it is clear, will yield a deeper and a more thorough understanding of the heterodox ways in which cultures produce, define, and manage themselves. Finally, an understanding of the ways in which the law is realised and articulated through its popular cultural practice and negotiation points up the power of popular culture: popular culture is not simply a domain in which the law is represented; rather, it is a domain in which law is practised, negotiated, legitimised, and embodied.

Intersections between film and law have always featured prominently in studies of law and popular cultures (see Denvir 1996, Chase 2002, Greenfield and Osborne 2001) and are thus the focus of three of the articles in this issue. In her 'Why "Law-and-Film" and What Does it Actually Mean?', Orit Kamir sets out to provide a theoretical framework for understanding the relationships between law and film by exploring three theoretical perspectives: first, that law, and the operation of the legal system more specifically, actually parallels films' modes of social operation; second, that films can prompt viewer-enacted judgments; and third, that films can operate as a form of 'popular jurisprudence'. In his discussion of the 2002 Spielberg film *Minority Report* William MacNeil analyses the film's fictional legal world as a way of exploring the idea of prediction in law, particularly in its role in the legal sub-discipline of Law and Economics. The film, MacNeil argues, takes a foundational tenet of Law and Economics—the notion that capital exchanges flow most smoothly when untrammelled by law—and plays it out to its terrifying logical limit. What is particularly interesting about MacNeil's argument is that *Minority Report* is not a law film, that is, it is not a film which overtly concerns itself with matters of law enforcement, legal judgement, or the rule of law. Instead, MacNeil regards *Minority Report* as a film which translates some of the core logics of Law and Economics into the narrative drivers of a popular film. In these two articles, films become a means of articulating law, of exploring its ramifications, and of demonstrating the 'real' ways in which law shapes the cultural world.

Although it includes a thorough analysis of the 1992 film *Unforgiven*, Rebecca Johnson's article takes a different approach to those employed by Kamir and MacNeil. Johnson's analysis starts with a spatial product—the highly gendered, popular space of the pub—and then attends to the methods and the ingredients of its cultural production. Stemming from her own experience of being ejected from two

pubs while carrying her nursing babies, Johnson sets out to examine the ways in which law, representation, and the physical everyday together construct pubs as places where ‘proper’ mothers should—and indeed may— not be. According to Johnson, liquor licensing laws, films that represent pubs as spaces for men and ‘bad’ women, and the behaviours of pub staff are ‘jointly implicated in the material construction and maintenance of gendered spaces’. In Johnson’s study, none of these ‘domains’—law, material practice, and film—is reducible to an epiphenomenon of another; rather, the three function in concert to produce the gendered space of the pub.

Connal Parsley and Marett Lieboff similarly foreground the power of law to produce or define cultural categories, specifically ‘art’, ‘the body’, and ‘citizens’. Both Lieboff and Parsley take popular public spectacles as their subjects of analysis, looking at the ways in which spectacles engage passing viewers, as well as legislators and policy-makers, in considering the constructive, inventive, and often exclusionary power of the law. Lieboff’s article focuses on the 1990s *Bodyworlds* exhibitions by the German anatomist Gunther von Hagens, and the debates it triggered regarding the definition—legal as well as popular—of bodies, property, and art. Von Hagens, who pioneered the body preservation technique of plastination, posed plastinated human corpses in a variety of outfits and poses: some were dressed as tennis players, some were dressed and posed so that they resembled famous works of art, and others were displayed in states of dismemberment: one of the posed figures, for example, stood holding his skin in his hands. Lieboff demonstrates that, in attempting to decide whether the exhibit was art or a desecration of bodies, lawyers were forced to confront the unstable ways in which law defines categories such as bodies, property, and art. Lieboff examines in detail the question of corporeal subjectivity and its legal construction: when, she asks along with the legal assessors of the *Bodyworlds* exhibition, does a dead body cease to be the property of its original ‘owner’ and become an object available for trade and manipulation? For how long after death can subjectivity and the now-dead subject’s desires be considered valid?

Parsley attends to German multimedia performance artist Christoph Schlingensiefel’s 2000 installation, ‘Auslander Raus!’ (‘foreigners out!’). This installation featured twelve putative asylum seekers who were housed inside a large container placed in one of Vienna’s main city squares. Activities and interactions in the container were broadcast live on the internet, along with descriptive biographies of the ‘asylum seekers.’ Viewers were then encouraged to vote out the refugee of their choice until only one was left: this person would be given money, as well as legal residency through marriage to an Austrian citizen. Parsley figures this spectacle as a site at which viewers were prompted to consider their own implication, as citizens, in mobilising laws to either exclude or incorporate individuals from the nation. The law, as Parsley demonstrates, is not a disinterested force which appears from nowhere: rather, it derives from, and inheres in, public prejudices and desires. Schlingensiefel’s spectacle forces its viewers to acknowledge their sometimes uncomfortable implication in the legal construction of the nation and its citizens.

Rather than focussing on a specific case study, Lieve Gies’s article considers the practical benefits of wedding Cultural / Media Studies theories and methodologies to Legal Studies work. Specifically, Gies anatomises the relationship between ‘law’ and ‘the media’. Using the concept of ‘legality’—or a general cultural sense of what is right and wrong, and how the law should manage these categories—Gies argues that

Legal Studies researchers sometimes pose potentially-unhelpful questions when it comes to dealing with popular media, such as whether the media ‘accurately’ represents law. Legal scholars, argues Gies, can deploy Media Studies methodologies, and in particular active audience research, not in order to declare whether or not a media representation of the law is ‘right’, but rather to make visible the ways in which individuals interpret and use the legal information they gain through representation. Further, Gies asserts that because ‘legality’ is a part of everyday life (and not just restricted to law courts and courtroom dramas), methods and theories which focus on individuals’ ‘legal consciousness’ will generate nuanced accounts of ‘popular legal culture which is rooted in ordinary experience’. Law and media, concludes Gies, are not opponents in the contest for legal ‘accuracy’; rather, the two are both integral components of ‘popular legal culture’.

REFERENCES

Bergman, P. & Asimow, M. (1996) *Reel Justice: The Courtroom Goes to the Movies*, Andrews and McMeel, Missouri.

Blomley, N. (1994) *Law, Space, and the Geographies of Power*, Guilford, New York and London.

Delgado, R., & J. S. (1993) ‘Critical Race Theory: An Annotated Bibliography’, *Virginia Law Review*, vol. 79, p. 461.

Denvir, J. (ed). (1996) *Legal Reelism: Movies as Legal Texts*, University of Illinois Press, Chicago.

Diggs, T K. (1996) ‘Through a Glass Darkly’, *ABA Journal*, vol. 82, no. 4. p. 72.

Friedman, L. (1989) ‘Law, Lawyers and Popular Culture’, *Yale Law Journal*, vol. 98, pp. 1579-1606.

Ford, R. (2001) ‘Law’s Territory (A History of Jurisdiction)’, in *The Legal Geographies Reader*, eds N. Blomley & R. Ford, Blackwell, Oxford, pp. 200-217.

Graycar, R (ed). (1990) *Dissenting Opinions: Feminist Explorations in Law and Society*. Allen and Unwin, Sydney.

Greenfield, S, Osborn, G & Robson, P. (2001a) *Film and the Law*. Cavendish Publishing, London.

Greenfield, S. (2001b) ‘Hero or Villain? Cinematic Lawyers and the Delivery of Justice’, *Journal of Law and Society*, vol. 28, no. 1, pp. 25-40.

Gunn, DL (ed). (1993) *The Lawyer and Popular Culture: Proceedings of a Conference*, Fred B Rothman, Littleton.

Jensen, E. M. (1992) ‘The heroic nature of tax lawyers’, *Tax Note*, vol. 54, no. 12, pp. 1557-1562.

Kennedy, D & Klare, K. (1984) 'A Bibliography of Critical Legal Studies', *Yale Law Journal*. vol. 94, p. 461.

Laster, K. (2000) *The Drama of the Courtroom*. Federation Press, Sydney.

Machura, S & Ulbrich, S. (2001) 'Law in Film: Globalizing the Hollywood Courtroom Drama', *Journal of Law and Society*. vol. 28, no. 1. pp 117-132.

Mashburn, A R. & Ware, D.D. (1996) 'The burden of truth: reconciling literary reality with professional mythology', *University of Memphis Law Review*, vol. 26, no. 4, pp 1257-1283.

Redhead, S. (1995) *Unpopular Cultures: The birth of law and popular culture*. Manchester UP, Manchester.

Robinson, M. (1998) 'Collins to Grisham: A Brief History of the Legal Thriller', *Legal Studies Forum*, vol. 22, no. 1-3, pp 21-34.

Robinson, M. (retrieved 2004) 'The Lawyer in Popular Culture: A Bibliography', Tarlton Law Library Website, University of Texas Law School.
<http://www.law.utexas.edu/lpop/lpopbib2.htm>.

Rosenberg, N. (1994) 'Hollywood on trials: courts and films 1930-1960', *Law and History Review*, vol. 12, no. 2, p. 341.

Sherwin, R K. (2000) *When Law Goes Pop: The Vanishing Line between Law and Popular Culture*. Chicago UP, Chicago.

Thain, A. (2001) 'Cape Fear - Two Versions and Two Visions Separated by Thirty Years', *Journal of Law and Society*, vol. 28, no. 1, pp 40-47.

Weidlich, T. (1993) 'Will The Firm further hurt the bar's image?', *National Law Journal*, vol. 15, no. 43.

NOTES on EDITORS:

Christy Collis is Lecturer in Media and Communication in the Creative Industries Faculty at Queensland University of Technology. Her research deals with the ways in which popular cultures and international territorial law intersect in the production of territorial possessions. Her current research project focuses on the legal, popular, and practical bases for Australia's claim to 42% of Antarctica.

Jason Bainbridge recently completed a PhD at the University of Queensland looking at the ways in which representations of law in popular media can be used as an alternative form of jurisprudence. He currently teaches Media Studies at the University of Tasmania.