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The Shifting Sands of “Impact” in Law and Popular Culture – Some Reflections

Der Treibsand der „Wirkungen“ in Recht und Populärkultur – einige Überlegungen

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Abstract: Law is not a question of simple clear rules applied objectively. Traditional black letter law continues to be the main focus of legal studies. There are a number of areas which involve laws ending up being “bent out of shape”. “Rule distortion” happens where those involved in the justice system determine what issues are to be proceeded against. There are also important differences in how the law plays out depending on who is involved in making decisions. The politics of the judiciary has been an issue which has attracted attention both at the general and individual level. There is also the question of how the law is seen by those whom the law is intended to protect and serve and how they act accordingly. This latter issue is the one with which this article is concerned. It surveys the paths taken by those with an interest in these questions, particularly the author’s own efforts, and seeks to suggest directions for the future, given the changes in technology which have occurred in the 21st century.

Zusammenfassung: Recht ist keine Frage einfacher, klarer Regeln, die nur objektiv angewendet werden müssen. Die Rechtsdogmatik bildet nach wie vor den Schwerpunkt des Rechtsstudiums. Darüber hinaus gibt es eine Reihe von Bereichen, in denen das Recht „aus der Form gerät“. „Regelverzerrung“ kann auftreten, wenn die am Justizsystem Beteiligten bestimmen, gegen welche Probleme vorgegangen werden soll. Es gibt auch wichtige Unterschiede in der Art und Weise, wie das Gesetz funktioniert, je nachdem, wer an der Entscheidungsfindung beteiligt ist. Die Justizpolitik ist ein Thema, das sowohl auf allgemeiner als auch auf individueller Ebene Aufmerksamkeit erregt hat. Außerdem stellt sich die Frage, wie das Gesetz von denjenigen gesehen wird, die das Gesetz schützen und von jenen, denen es dienen soll, und wie sie entsprechend handeln. Letzteres Thema ist das Thema dieses Artikels. Er gibt einen Überblick über Wege, die von Autor:innen eingeschlagen wurden, die sich für diese Fragen interessieren, insbesondere über die eigenen Bemühun-

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gen des Autors, und versucht, angesichts der technologischen Veränderungen im 21. Jahrhundert Richtungen für die Zukunft vorzuschlagen.

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Contrary to what a rookie law student might imagine, law is not a question of simple clear rules applied objectively.¹ Things are a little more complex. Traditional black letter or doctrinal law has been and continues to be the main focus of legal studies. It looks at what the wording of the rules means in particular circumstances. There are, in addition, a number of areas which involve these laws ending up being further “bent out of shape”. These involve three principal areas of focus – apprehension, application and audience perception. “Rule distortion” happens when those involved in the justice system determine what issues are to be proceeded against (Skolnick 1966; Jackson et al. 1989). There are also important differences in how the law plays out depending on who is involved in making decisions. In simple terms, the politics of the judiciary has been an issue which has attracted attention both at the general and individual level (Griffith 1975; Robson & Watchman 1981). There is, finally, the question of how the law is seen by those whom the law is intended to protect and serve and how they act accordingly. This latter issue is the one with which this article is concerned. It surveys the paths taken by those with an interest in these questions, particularly my own efforts, and seeks to suggest directions for the future, given the changes in technology which have occurred in the 21st century.

Background

In my life as a practising lawyer dealing with landlord and tenant residential disputes, I became concerned that there seemed to be basic misunderstandings about the rules under which tenants could be evicted from their properties. These misrepresentations were on both sides. In the 1970s ex-tenants whom I encountered in my professional life had been prepared to move out of properties where they had full rights of security of tenure. They assumed that because they were told the landlord wished to regain the property, for whatever reason, they had to leave. In one instance, a landlord couple were splitting up and wanted to divide their assets and sell the property. They were able to regain possession because my advisees assumed

¹ The material I refer to in this chapter forms the basis of my thoughts on Vincenzo Tomeo which appears in my translation of *Il giudice sullo schermo* – *The Judge on the Screen* (2025) (Fairleigh Dickinson).

that this gave the owners the right to the property automatically – which, of course, it did not. In another case, an agricultural worker who was offered a smaller property in a less convenient location moved because he thought the landlord's wishes were the only determining factor in where he lived. In both of these cases, and in other ones which I came across, the misknowledge was crucial in important decisions in people's lives.

Work took place on the tortuous interpretations of the courts in relation to landlords' varied attempts to avoid the restrictions on their ability to evict tenants with statutory rights to rent control and security of tenure. It was clear that elaborate ruses were applied to tenants irrespective of the limited impact of any such finding (Robson & Watchman 1978). A concomitant impact was to avoid the limitations on eviction. As a result, I undertook Government-funded research in the early 1980s to inquire into landlords' understanding of their legal rights in relation to the re-possession of properties they rented out. The major finding of this research across a range of different communities in Scotland, urban and rural, was that landlords had little knowledge of their actual rights. They strenuously sought to avoid imagined restrictive legislation using mechanisms which were entirely unnecessary for their purposes (Robson & Nicoll 1985: 2). Around the same time, I was also involved in carrying out Government-funded research into the operation of legislation designed to provide protection in the home to victims of domestic abuse. This involved inquiring into how the rules were understood by both victims of abuse and those involved in operating the rules. It became clear that the whole impact of the protections depended not just on how the police and judiciary interpreted the legislation, but how valuable victims and their advisers perceived the downsides of the rights (Jackson et al. 1989).

When I shifted my focus in my academic scholarship from the behaviour of judges (Robson 1979) to the wider question of the context in which the justice system operated, the same concern with the impact of knowledge and understanding was at the heart of my interest. It has continued as my work has moved from popular literature to film and subsequently television. At the core of these studies has been: what is the impact? Most recently, this was demonstrated in a transnational volume of essays I co-edited and contributed to on vigilantism in popular culture (Robson & Spina 2022). The concern has always been on the practical effect of these works whether it was on tenants or victims of abuse being deprived of their homes or citizens being misled by populist misinformation about dangerous groups in society. How to determine what had an impact continues to be crucial. This article looks at how the need to take decisions based on sound empirical data appears to have emerged but has become ever more problematic in the changed media world we inhabit. At one point it seemed to me that research into the area for which I had spent a number of years advocating as the most vital to study – namely television – was doomed by technological advances and changing consumer behaviour. There is, however, a possible

solution to the conundrum which involves adapting the methods and approach in the 1960s of the Italian pioneer of popular culture analysis, Vincenzo Tomeo (1973). There are, however, a number of reasons why such a solution could turn out to be of limited viability. This article seeks to expand on these observations and assess the way forward for scholars in the field of law and popular culture.

General Impetus to Examine Popular Culture

I was initially distracted from concerns with the everyday struggles of homeless people, abused women and evicted tenants by what seemed to be information in the media to link “fat cat” lawyers with moves to limit the funding of the rights of poor people to legal representation. I began to look beyond the everyday stories in the newspapers about how much advocates in Scotland were earning from legal aid.² Starting with such writers as John Grisham, Richard North Patterson and Scott Turow I noted that there was a range of legally themed narratives in which venal and self-serving lawyers dominate. The dramatic tensions emerged from them being confronted by a steady stream of “hero” lawyers. In film we went from Paul Biegler in *Anatomy of a Murder* (1959, USA) and Atticus Finch in *To Kill a Mockingbird* (1962, USA) to Rudy Baylor in *The Rainmaker* (1997, USA), Jan Schlichtmann in *A Civil Action* (1998, USA) and Wendell Rohr in *The Runaway Jury* (2003, USA). The same “David and Goliath” theme was encountered extensively in TV lawyer shows from the United States, with “*The Client*” (1995–1996); “*The Practice*” (1997–2004), the United Kingdom with “*New Street*” (2006–7) – for the earlier series see Robson (2007a & 2007b) – and Europe (Robson 2009a; Greenfield et al. 2010). I took these concerns from the narrow focus on legal assistance limitations to the broader issue of the law’s general hegemony and the role of popular culture in creating and reinforcing this.

Literary Forays

In my first published work directly on popular culture, my aim was simple. It seemed to me that those whose work I had encountered were focused on important writers from the past rather than popular writers of the present. I was amazed by the fact that a certain negative image of the legal profession could be gleaned from

² This is a theme which continues to this day with an annual Top Ten of legal aid “big earners” in the newspapers – Available from: <https://www.scottishlegal.com/articles/scottish-legal-aid-board-reveals-top-20-highest-paid-advocates-and-firms> [Accessed 10/02/23].

the work of modern writers, principally John Grisham. At the time I expressed this concern on the basis that such was the reach of this image of lawyers, that an impact seemed probable.

“The works of John Grisham are of special interest in their portrayal of what lawyers are about. John Grisham has produced six legal thrillers ... These have all featured in the best-seller lists, and some 40 million copies of his books are in print in the United States alone. 60 million copies of his books in the English language have been sold... He is the fastest selling author in history. His sales figures are staggering” (Robson 1996: 201).

The specific concern which I had at the time, as mentioned, centred around funding for legal services for the unprivileged. By portraying the legal profession as venal and self-serving and cutting these budgets, the interests of the poor would be harmed. No one, though, would feel disturbed if a few bloated lawyers had their incomes reduced. My work went no further than suggesting that the prevalence of such a negative image *must surely* have an impact, not only on my initial disadvantaged group but also on people's faith in the justice system.

“Given the pervasiveness of Grisham, not only in books, but in films too, the confidence which might of [sic] been engendered by “LA Law”³ is seriously undermined by the corpus of Grisham's work. The rule of law may not be quite dead, but is not in good health in this world.” (Robson 1996: 218)

At the end of the 20th century with successful big screen versions of seven of his novels, with stellar casts, I assumed a similar kind of impact was to be found in the films which covered his first seven novels (e. g., “A Time to Kill”, USA 1989; “The Firm”, USA 1991; “The Pelican Brief”, USA 1992; “The Client”, USA 1993; “The Chamber”, USA 1994; “The Rainmaker”, USA 1995; “The Runaway Jury”, USA 1996). He certainly fared much better than his fellow legal thriller authors in securing the step from the page to the screen (Robson 2001: 148).

Law and Film

In early work on law and film, the notion of influence through cultural dominance was expressed to be central. Machura and Ulbrich wrote about “the remarkable influence of Hollywood courtroom films” (2001: 117). They noted that American

³ American TV drama series between 1986 and 1994 showing a range of worthy lawyers engaged in ethical legal practice. Available from: <https://www.imdb.com/title/tt0090466/> [Accessed 16/12/22].

movies had “influenced the image of legal procedure a great deal”. Their conclusions were based on work on children’s knowledge of the courts and legal procedures in Germany. This influence was ascribed to the dramatic nature of the jury-centred adversarial process combined with the added frisson of the death penalty (Machura & Ulbrich 2001: 124–6). Beyond influencing the *Zeitgeist*, however, they did not specify the exact process of influence. My own contribution in the same collection on the filming of John Grisham, as noted above, was principally focused on the adaptation process. It can, however, be clearly inferred that film was of importance as having some kind of impact, and thus, was worthy of examination (Robson 2001).

At the same time, Steve Greenfield, Guy Osborn and I indicated the importance of impact in our introduction to the field, “Film and the Law” in 2001 (Greenfield et al. 2001). Our Conclusion to Chapter 1 was entitled “Law Films – Cause and Effect”. We noted that defining the field of what was a law film and looking at whether the legal profession had been inaccurately portrayed in such films drew us into “theories and ideologies of the cause and effect of the media and popular culture more generally” (Greenfield et al. 2001: 27). We observed,

“[t]he major concern in this area is whether the viewing of particular images can lead to changing behaviour. What we are concerned with is not alterations to behaviour, but whether the development of consistent portrayals can change how the subject matter is perceived by the viewing public. Put simply, do ‘anti-lawyer’ films, make or contribute to ‘anti-lawyer’ attitudes in the cinematic audience?” (Greenfield et al. 2001).

Our conclusions were less than definitive, given the paucity of empirical material which we were aware of in relation to law films. With backgrounds as lawyers used to teaching students how to determine the meaning of statutes and case law, we called for more empirical work on the question of cause and effect bearing in mind that slightly different processes were at work with the meaning for viewers having a role.

“[...] we need to be more aware of, and incorporate, ideas concerning the consumption of film. Theories of spectatorship are important in helping us to understand the phenomenon before us. This is one angle to the question of watching film; the other is to work from the opposite end and gain information on the images in legal films that are being received. We are not suggesting that we switch the emphasis towards the study of the power of the mass media, but we need to further acknowledge the importance, and utilise more fully, the work that has been carried out by media scholars.” (Greenfield et al. 2001: 192)

We took these thoughts on law and film’s impact to an International Conference in Oñati in 2003 where impact became the major theme where all concerned became aware that empirical work was limited everywhere. This realisation resulted in a modest transnational research project. This went wider than film to cover media

in general. It produced a study across the jurisdictions of Argentina, Australia, England, Germany, Scotland and the United States (Asimow et al. 2005). The work was based on questionnaires completed by first year students (1Ls) at Law School prior to the process of socialisation into the ways of legalism which pervaded legal education. Hence, the survey took place on their first day of class in the United States, England, Scotland, Germany, Australia, and Argentina. The survey asked about the 1L's opinions of the prestige and honour of lawyers and whether lawyers deserve their incomes. It revealed that 1Ls had quite low opinions about whether lawyers were honourable, sometimes lower than the opinions held by the general public. The survey also inquired about the sources of information students found helpful in forming their opinions. The 1Ls reported that the news, discussions with friends, and lawyers in the family were helpful. Surprisingly high numbers reported that popular culture sources had been helpful. Numerous studies have shown that people's opinions are influenced by the fictitious pop culture they have consumed (so-called media effects). In some countries,⁴ the 1L's opinions of lawyers' prestige, honour, and earnings were positively correlated to the amount of legal film and television shows they had consumed. In Scotland, interestingly for me, they were negatively correlated. These relationships could suggest the presence of a media effect (meaning that the 1L's opinions were influenced by the pop culture they had consumed).

The most recent attempt to survey the nature of popular culture generally with which I have been involved has been the work done on vigilante or "self-help" justice (Robson & Spina 2022). The observations from this transnational examination of the extent and nature of vigilante themes in popular culture make for fascinating reading. The starting point had been my own work on American and British vigilante films which suggested that there was a clear and constant model of vigilantism in modern cinema. This derived from "Death Wish" (USA 1974) to "Peppermint" (USA 2018) in the form of lone vigilante revenge by individuals impacted by a random event affecting their family. The wider research indicated that the hegemony of the American approach was by no means as powerful as the British experience had suggested. Film representations of vigilante justice elsewhere were, in fact, by no means universal. The emphasis rather was on the specific local elements involved in driving self-help justice. There also seemed little connection between the lone revenging vigilante films of the Charles Bronson "Death Wish" type and the kinds of self-help activities found in real life (Robson & Spina 2022).

4 Particularly the U.S., Germany (summary of the German results: Machura & Asimow 2004), and Argentina.

Television and the Law

The direction for law and popular culture which we noted as being likely to bear fruit in the second edition of “Film and Law” has led to empirical work on the impact generally in the area of TV as well as on specific themes. There was already pioneering work carried out by Salzmann, Dunwoody and Podlas on TV’s impact on a number of issues. Salzmann and Dunwoody looked at the views of law students and noted that they were sceptical about the view of the relationship between the TV “lives” of lawyers and the reality of legal practice and were able to make a distinction between reality and TV (Salzmann & Dunwoody 2005). Podlas looked at a range of different issues utilising cultivation theory. These include the litigiousness of people in relation to television (Podlas 2005), the impact of a TV series on ideas of law and order (Podlas 2008) and jurors (Podlas 2009).

An initial call to scholars to look more closely at television rather than principally film (Robson 2009b) resulted in a wide-ranging set of essays on diverse themes (Robson & Silbey 2012). Almost all, however, were in the literary tradition analysing the nature and meaning of individual television products. The expressions of interest in response to our call for papers on law and TV were reflected in those essays which were published. Specific empirical work was limited.

There was some detailed coverage of the methods of doing TV research. Part 1 of the book was entitled “Method/Context”. Of these five essays, two addressed the question of methodology and involved empirical data (Podlas 2012). Kimberlianne Podlas provided a valuable account of the different assumptions behind media research within communication studies, media theory and psychology on the impact of television viewing. She drew attention to the range of interconnected approaches from cultivation theory, genre-specific viewing, heuristic processing and framing to show how the media had a demonstrable role in socialisation, norm formation and agenda setting. This took place in various distinct areas from how judges were expected to act to whether lawyers were seen as ethical. She also warned against the dangers of confusing “media coverage and unsubstantiated assertions with logic and empirical evidence” (Podlas 2012: 101). Surveying the field, she noted that in terms of factual legal knowledge “(a)udiences exhibit very little knowledge gain in the form of concrete facts, except from news typically political debates and stories about catastrophic national events. Even then, however, knowledge gain is modest or insignificant” (Podlas 2012: 101; McLeod et al. 1994; Kim & Vishak 2008). She also pointed out that, valuable though individual empirical research projects are, it is impossible to “isolate all of the sources and messages about law that a person has accumulated over a lifetime, so as to conclude that television, alone, is the cause of any particular attitude” (Podlas 2012: 105).

A further issue was raised by Cassandra Sharp. She noted that media consumption is an active process in which viewers' existing attitudes and beliefs impact how television imagery is interpreted, integrated, and acted upon. She urged scholars to go beyond quantitative research on the effects and influence of the media and she suggested much greater engagement with "qualitative empirical research on the connections between television representations and viewer *interpretations*" (Sharp 2012: 112). As part of the process of going beyond textual critique and content analysis – the perceived impact of various representations on public perceptions – she drew attention to looking at how audiences interpret and use popular images. The ethnographic process she focused on includes participant observation, in-depth interviews and focus groups to gain a richer insight into the interpretive community within which viewing takes place. Part of its problem, as Sharp recognised, was the additional time – and expense – involved in seeking to move beyond "blunt and generalising statements about media influence" (Sharp 2012: 129; Gies 2006).

Along with my colleague Jennifer Schulz, I sought more recently to contribute to this scholarship with two collections of essays from a range of different countries. In the first one we sought to continue with work on TV (Robson & Schulz 2016). The approach to TV, rather like its counterpart on film, had hitherto principally been concerned with cultural/literary analysis. Individual programmes and series had been scrutinised in terms of their significance to such issues as the representation of women (Schulz 2009), the impact of reality television on perceptions of justice (Robson & Silbey 2012) and specific issues such as rape (Bergman 2012). In addition, there have been overviews of how TV lawyers and problem-solvers have evolved over time (Robson 2007a; Robson 2007b). The literary approach continued to develop into such areas as superheroes and graphic novels (Dailly & Davidson 2012; Ramiro Avilés et al. 2014), although the world of PS4 and Xbox and the exploits of those such as Phoenix Wright: Ace Attorney (Amazon 2012, 2014 and 2019), had yet to be explored (Robson & Schulz 2016: 2).

Most of the work had looked at film and television from a cultural studies perspective, with a focus on "meaning" and "message". Most scholars had a legal background, but some came from the social sciences and the humanities (Clover 1992; McNeely 1995). There have also been some explorations from the perspective of film studies. These emphasised the different techniques which film used to construct effective narratives (Black 1999; Moran et al. 2004; Sarat et al. 2005).

The legal personnel examined were almost always lawyers and occasionally judges. Negotiators, mediators, or arbitrators were rarely mentioned (Schulz 2008; Menkel-Meadow 2004: 583). In terms of police officers, scholars suggested that popular culture emphasised that 'crime does not pay' (Carlson 1985) and thus the public received an "image of crime and justice that typically supports a policy of crime control mechanisms ahead of due process protections" (Surette 1992).

Policing was often “depicted as glamorous, with a great deal of independence and access to tremendous resources, with an extremely high rate of success” (McNeely 1995). The assumption that there was a link between older series and modern-day offerings was often taken for granted. A common cultural heritage stretching from the TV series “Perry Mason” (USA 1957–1966; through “LA Law” (USA 1986–1994) down through “The Practice” (USA 1997–2004) and now to “The Good Wife/Fight” (USA 2009–2016; 2017 – 2020) and “Suits” (USA 2011–2019) underpinned discussions about changes in the nature and identity of the TV lawyer (Asimow & Mader 2004). Similar sorts of overviews existed in the scholarship on police and detective series on television (Turnbull 2014). The issue of what was the ‘lifespan’ of a television series was one worth addressing, as the assumption that there was a link between shows might not be borne out with new, younger audiences.

There was limited empirical work on the impact of film and television on their audiences. One of the earliest texts drew attention to the importance of cinema and the messages of films about law. Vincenzo Tomeo, in his 1973 exploration of the influence of Italian film on the theme of justice, “*Il giudice sullo schermo*” (aka “The Judge on the Screen”) (Tomeo 1973), noted how films influenced people’s view of the legal system based on empirical studies undertaken in the late 1960s and early 1970s. Tomeo was well ahead of other scholars with his interest in the impact of popular culture on people’s beliefs and attitudes. As noted above, this kind of detailed empirical work has been taken up in other studies in the United States, most notably, by Kimberlianne Podlas on reality television (Podlas 2008, 2009). The views of younger generations of lawyers have also been covered in a number of studies (Salzmann & Dunwoody 2005; Sharp 2005), and an international study has looked at the sources of law students’ ideas about justice and how these varied between cultures (Asimow et al. 2005). Overall, however, there had been limited empirical work.

Against this limited empirical backdrop came a transnational work. Work on film and television had largely focused on the United States.⁵ The aim of the Robson and Schulz transnational study was to extend the coverage to other areas of the world. Thus, the study, undertaken in 14 different countries, mapped out exactly what kind of law-centred television programming there was in November 2014. The various chapters look at the raw data of how much ‘law and justice’ material television viewers were able to access in the developing multi-channel world of 2014. Contributors examined all three phases of the legal process – apprehension (police focus); adjudication (lawyer focus) and disposition (prison/punishment focus) in all

5 Francophone writing such as *Justices à l’écran* (Guéry 2007) and the extensive Spanish language material focused and still focus primarily on US material too. See also (Greenfield et al.2024).

forms of legally themed programming (dramas, reality shows, documentaries, etc). Across all 14 countries by far the heaviest television focus was found to rest upon the first phase of the legal process, namely apprehension or police work.

Another finding that was consistent across many jurisdictions was the over-representation of American legally themed television programming. In Greece 83 % of the police shows on television were American (Robson & Schulz 2016: 125). In Canada, 71.7 % of all the legal shows airing on television were American (Robson & Schulz 2016: 60). In Australia (Robson & Schulz 2016: 16), Denmark (Robson & Schulz 2016: 78) and Poland (Robson & Schulz 2016: 171) 62 % of the law and justice-themed shows were imported from the United States, in Germany 60 % of the shows were American (Robson & Schulz 2016: 110), 54 % in Italy (Robson & Schulz 2016: 154) and almost 50 % of the shows in Switzerland were American (Robson & Schulz 2016: 203). Israel (Robson & Schulz 2016: 139), and Britain (Robson & Schulz 2016: 50) had far fewer American imports.

Uniquely, in the Robson and Schulz 2016 collection, the results were also related to the TV production and content control systems existing in each country. One of the problems common to all the work on law on television had been that the readership was assumed to have knowledge and understanding of the nature of television systems. What had been lacking was any indication of what limitations there were on which kinds of programmes were likely to be made in the first place. Also missing was a sense of what kind of justice television had been available over the years and how the programmes and issues had changed over time. Finally, the financing of television services in different countries was an issue which had not featured in the books and articles which had looked at law and justice on the small screen. The authors in the transnational collection examined the history, development, statutory backdrop and financing behind the television broadcast in their countries.

In “A Transnational Study of Law and Justice on TV” we were curious as to how legally themed television programmes could provide a window into why the justice system operated as it did. We, like others (Osborn 2001), were seeking to understand and teach the law in context, rather than as some abstract set of rules unconnected with politics, economics or social forces, and thus our collection highlighted the sociocultural contexts. Contributing authors described changes in representations of women, people of colour and other under-represented groups on television. The studies revealed a commonality between jurisdictions with more than one language: the minority language speakers watched less dominant TV, preferring programming in their minority language. So, for example, French-speaking Canadians and Flemish-speaking Belgians were much more loyal to their local minority language TV, whereas English-speaking Canadians (Robson & Schulz 2016: 61) and French-speaking Belgians (Robson & Schulz 2016: 34) embraced dominant foreign TV shows – in their daily language.

The original impetus to modern law and popular culture studies was the underlying assumption that what was shown on television is of significance in shaping the public's ideas about and reactions to the justice system (Jarvis and Joseph, 1998: *passim*). Steven Stark noted when interest in law and popular culture emerged in the 1980s that by the time an American child reaches the age of 18 she or he will have seen 18 000 murders on TV (1987: 231). However, as Stark pointed out, gauging the specific influence of watching those murders is far from straightforward. We did not know how significantly TV was shaping the public's views on crime. What we did offer in “A Transnational Study of Law and Justice on TV” however, which was absent from all previous scholarship, was a detailed explication of how extensive the TV material on law and justice was in a number of jurisdictions in the world. We also noted the nature of the coverage and its emphasis on policing rather than “lawyer” or prison shows. What we hoped to do with this transnational study was to provide a basis for empirically assessing whether or not the assumptions of the significance of television law bore scrutiny.

In “A Transnational Study of Law and Justice on TV” we felt it was worth saying that our interest in the relationship between law and popular culture arose from a very simple practical question: how is it that social structures which are manifestly unjust and exploitative can be sustained effectively over long periods of time with minimal challenge? Our interest in the role of popular culture was as crudely functionalist as this. It was not concerned with the aesthetics of the cultures for their own sake. We were concerned that scholarship in the field ran the risk of becoming an end in itself, with its language and objects of study becoming so esoteric as to defy understanding to all but a tiny coterie of elite scholars.

Instead, we hoped that our collection of empirical research might provoke and promote new questions and understandings. Readers of “A Transnational Study of Law and Justice on TV” would find, across the whole range of the different countries examined, that lawyer-focused television was very much a minority offering. Even though there had been very many TV shows featuring a host of lawyers in dramas and reality TV shows, these shows did not actually feature extensively in the empirical studies collected in the book. On the other hand, police and detective series dominated in *all* jurisdictions and a great deal of the programming did, as one might have expected, indeed, stem from the United States.

In a world of multiple channels, ‘catch-up’ TV, or binge-watching, the physical task of providing data on what was available to watch was becoming problematic. Indeed, accessing television is in the process of evolution. Accessibility platforms and viewing habits were changing. The rise of viewing through streaming, Netflix⁶

6 e. g. Your Honor (2020–2023, USA)

and boxed sets, along with the proliferation of niche channels, meant that traditional ideas about the extent and nature of law and justice on television had to be considered quite carefully. What we did in the 2016 collection was to limit ourselves to those channels which were free to air. At the time, pay-per-view TV only occupied a limited part of the market in most of the countries we covered and for that reason, it was excluded from the data.

In mapping out what was actually available to watch in detail, and the context in which it was available, meant we could start to address the kinds of issues Paul Bergman identified as crucial. He talked about whether or not popular legal culture reflected, reinforced or revised beliefs about law, lawyers and the legal system (Bergman 2012: 153). What seemed clear from the 2016 empirical study was that popular culture scholars needed to go further and include the police and law enforcement if they wanted to know about perceptions of the legal system. The thing that emerged clearly from our study was the overwhelming dominance of the first aspect of the legal process, namely, apprehension or police process, both in drama and in reality forms.

Asimow, Brown and Papke (2014: 1) talk of “the ways in which cultural products can shape expectations about legal systems and contribute to critical debates about lawmakers, justice and the exercise of state power”, and “ways in which popular representations of law mediate legal practices and conceptions of justice”. Our study suggested that the extant emphasis on portrayals of lawyers had diverted scholars from work on the police, and this needed to be addressed in order to fully debate conceptions of justice, fairness, the exercise of state power, the content of legal rules, and the processes by which law is made and is seen to be made in the world.

With these limitations in mind, Jennifer Schulz and I commissioned further international empirical research. We required contributors to focus on specific areas of ethnicity, gender and diversity as represented in justice system programming in their various jurisdictions (Robson & Schulz 2018). In this collection, we proceeded on the assumption that television and other series that viewers watch on their TVs, computers, phones, tablets, and other devices, had some kind of influence on law. What was the most watched material: All of our authors found that viewers in their countries watched a combination of “regular” TV as well as speciality channels and subscription video-on-demand (SVOD) services, such as Netflix, so this collection attempted to include all of them. All of us found similar issues involved in seeking to assess the significance of highly watched programmes as well as assessing SVOD shows for which viewership numbers are not provided. We all recognised the particularity of different national and cultural contexts, and yet employed clear, common methodology, simple language, and an unambiguous focus: diversity. Our contributing authors examined areas of law and justice on

television which were both specific to their individual jurisdictions, but which, we suggested, illustrate broader themes of relevance outside these jurisdictions. In this collection, we believed we had the beginnings of a valuable link between Law and TV and what was going on in “real life”.

The individual studies paid particular attention to diversity – gender, age, ability, ethnicity, race, class, sexual orientation, nationality and religion in law and justice TV series (Robson & Schulz 2018). These are socio-culturally constructed representations, categories, markers, and identities, and what TV ‘says’ about them is important. Specific representations of gender, ethnicity, sexuality and class are generated every day on television, and the most popular shows are seen by millions of people. These representations are circulated as norms and thus they must be examined by law and popular culture scholars. Simply put, popular culture is a source from which people can acquire values and behaviours. The stereotypes, both positive and negative, embedded in cultural products like television shows, are relevant in people’s acquisition of values (Gálvez 2018: 1). Therefore, we must be cognizant of the types of depictions we see of women, people of colour, ethnic minorities, gay and lesbian characters, and other marginalized people on television. As Julie D’Acci notes: “TV is a technology and a social, economic, cultural and ideological institution, it exists as such within a whole range of different relationships to the countries in which it is produced and/or consumed, and to the economic, religious, and ideological frameworks of those countries” (2004: 374). In these pages, we provided the first transnational empirical look at ethnicity, gender and diversity on legally themed television shows. We all examined the content of the three most-watched programmes.

It was our view that we could work to negotiate, resist, change and develop depictions of marginalised characters on television and that this would enrich the legal academy, student experience, the practice of law, and society generally. We know that the legal system, which promises equal treatment, so consistently does not deliver equality. By making more overt attempts to engage with gender, age, disability, ethnic, racial, class, sexual orientation, national and religious discrimination, as Law and Popular Culture can, a transformation in the legal and social fields might begin. Again, we did not specifically assess impact precisely but rather assumed it was likely to flow from the depictions encountered.

Changing Patterns of Production, Distribution and Consumption – The Rise of Streaming

Even as the surveys of what was being shown on television across different nations and countries were arriving it was clear that traditional ideas of viewing films through cinema attendance and watching television at fixed times on single-family sets were undergoing massive changes. Although video recording has been available to the general public since the 1980s its most obvious impact was initially in the film rental market. In the 21st century the emergence of DVDs further impacted on film attendances (British Film Institute 2022: 128–142). Just as videotapes were replaced by discs, the latter have declined in their popularity.⁷ The availability of streaming services has been instrumental in this *volte face* in the viewing habits of the populace.

How viewership is estimated in the third decade of the 21st century raises issues for those of us concerned with seeking to measure impact. There are a variety of methods which have been adverted to earlier in this article. One approach in the very early days was films which were regarded by scholars themselves as important and which had been influential on the scholars themselves (University of San Francisco Law Review 1996). In addition, in both the literary, film and television scholarship there has been an assumption that numbers matter. From a focus on the work of John Grisham on the one hand (Robson 1996: 2001), to the coverage of TV in Germany (Machura & Ulbrich 2001; Machura 2012), there has been an assumption that the reach of an item was a major factor in determining what should be examined. Combined with the sheer popularity of film and TV there was also the question of the recognition of artistic products in terms of awards from a range of bodies from the Oscars, Golden Globes and BAFTAs to the various European film bodies. Some TV material has been examined stemming from longevity and recommissioning of series from “Justice” (UK 1971–1974) to “Rumpole of the Bailey” (UK 1978–1992) and “Silk” (UK 2011–2014) (Robson 2007; 2014; 2015).

Rather more technical, less intuitive approaches have also featured in seeking to evaluate the impact of popular culture on the justice system. These approaches have for a variety of reasons been relatively small scale. The research into the perceptions of law students (Asimow et al. 2005; Salzmann & Dunwoody 2005) was important but limited in its scope. The work was seen as exploratory but recognised that its application was, of course, somewhat restricted. What we were looking at were law students. Whilst they are part of society, they cannot in all seriousness

⁷ Blockbuster went from its first store in 1985 to 9000 outlets in 2004. It went into administration in 2010. <https://www.indy100.com/viral/map-rise-fall-blockbuster-video-b1833656> [Accessed 9/2/24]

be regarded as totally representative. The same can be said about the valuable but limited research bases employed by Kimberlianne Podlas (2005; 2009; 2012).

Most extensive, ironically, was the attempt by Vincenzo Tomeo back in the late 1960s and early 1970s to find out the views of a broad swathe of the populace in his research into the impact of Italian law and justice films (Tomeo 1973). The methodology he employed with his in-depth questioning of a representative audience of Italians went beyond the work done subsequently. It is a moot point how this might be used as a model by anyone seeking to assess the impact of popular culture on the justice system and its operation. The richer kind of data which Cassandra Sharp discussed in integrating further qualitative approaches from ethnography would be worthwhile in this context (Sharp 2012: 121). Whatever steps are taken they will need to go beyond notions of changes in the *Zeitgeist*. These approaches are attractive. It is, however, important to recognise this provides only a very limited kind of solution to the question of impact. The way forward is far from clear. How to evaluate impact beyond the extent of the coverage of legal themes in popular culture and the most popular material must involve elaborate and extensive models. Specific studies on individual series and films may be the way forward. Operating within individual communities using an ethnographic approach might also be a way forward. Whether or not a way around the ubiquity of channels and streaming options would allow anything akin to what Tomeo sought to achieve 50 years ago is what I am wondering about.

When I started this piece I, perhaps naively, assumed that, by the end of surveying the work done over the years, a clear solution would present itself as the next step forward. This has not exactly happened. Work is, however, crucial for a richer picture of law's representation in popular culture. For those coming into this field anew, solutions beckon centring on funding for in-depth long-term work on the public reception of products of popular culture. The work also needs to explore the broader picture of how programmes get commissioned as well as the constraints on those involved. It is that with which I am currently involved, initially in relation to the long-running Scottish police series, *Taggart*, (STV 1985–2010) and will have in publishable form in due course.

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