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The Mirror And The Lamp: The Law And Popular Culture Seminar

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Abstract

This chapter in a symposium in the Journal of Legal Education on visual media and legal education discusses the seminar on Law and Popular Culture. This seminar focusses on the interface between the world of pop culture products (mostly movies and television shows about law and lawyers) and the world of law and law practice. Movies and television shows reflect popular beliefs and attitudes about law and law practice (the mirror) and also construct those beliefs and attitudes (the lamp). Seminar sessions focus on particular broad legal issues such as criminal and civil justice, the adversary system, heroic lawyers and bad lawyers. Each session is based on a particular movie or TV episode. One session concerns the life of lawyers and is based on the classic 1933 film *Counsellor at Law*.

This article shares my experience teaching a seminar on Law and Popular Culture both to law students and undergraduates.¹ When students engage with pop culture products such as movies and television shows, the result is quite different from other undergraduate or graduate courses. Normally, the teacher is the expert and the students passively absorb the teacher's knowledge. But in a course based on the media of popular culture, the students share expertise with the instructor. Every student in the room is already an expert in interpreting pop culture. They know the language of film and television. They have been practicing that language since before they learned to talk, much less read. Every student has seen hundreds of movies and

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¹ I have co-authored a teaching book that is geared to my teaching methodology. MICHAEL ASIMOW & SHANNON MADER, *LAW AND POPULAR CULTURE—A COURSE BOOK* (2d ed. 2013) (hereinafter referred to as *Course Book*). Complimentary copies of the *Course Book* are available to instructors on request from the publisher, Peter Lang, customerservice@plang.com. There is a detailed teachers' manual which I will make available to any instructor who requests it. Please contact me if you would like to receive a copy of the manual. I'll also be happy to send a copy of my syllabus to anyone who asks for it. A competing course book takes a different approach to teaching law and pop culture, relying heavily on excerpts from law review articles. DAVID RAY PAPKE, CHRISTINE ALICE CORCOS (and six additional authors), *LAW AND POPULAR CULTURE: TEXT, NOTES, AND QUESTIONS* (2d ed. 2012).

thousands of television shows. Very likely, the students have consumed more popular culture than the instructor has.

The students bring to class deeply felt opinions about both law and pop culture. They are inspired or infuriated by the films or television shows they study in the course, such as *To Kill a Mockingbird*, *Anatomy of a Murder*, *The Verdict*, or *Philadelphia*. They are full of ideas, arguments, and interpretations. They speak up in class. They argue with each other and with the instructor. They are not overawed by the instructor's interpretation of a film because their interpretation may be just as valid. The level of interactivity in the classroom equals that in the most engaging and best taught classes.

I. The Mirror And The Lamp

A course on law and pop culture explores the *interface* between the worlds of law and pop culture. Both law and pop culture are enormously important in our lives. All of us swim in a sea of films, televised dramatic shows and reality shows, and numerous other imaginative texts. Television is a vital part of life in all countries and most families spend many hours every day in front of their television sets or consuming programming on mobile devices. During thirty minutes of watching television, we consume more images than a member of pre-industrial society consumed in a lifetime. All of us need tools to enable us to understand, interpret and fight back against the onslaught of images that assault us every day.

It is useful to define the rather slippery words “popular culture” and “popular legal culture” at the outset. These terms have two quite different meanings—broad and narrow.² The *broad* meaning of “popular culture” is the aggregate of people’s beliefs and attitudes. The *broad* meaning of “popular legal culture” is everything that people believe about law and lawyers. The *narrow* meaning of “popular culture” refers to the *media* of popular culture—movies and television shows as well as music, computer games, stage plays, novels and the like. The *narrow* meaning of popular legal culture is media about legal subjects, such as movies or television shows about lawyers.

An important theme of the course concerns the many ways that law and pop culture influence each other. The wall between them allows a lot of traffic to pass in both directions. Thus the media of popular legal culture both *reflects* what people believe about law and lawyers (popular legal culture in the broad sense) and *constructs* those beliefs. Or, to put it another way, pop culture serves *both as a mirror and as a lamp*.

First, consider pop culture as a mirror. The media of popular culture (in the narrow sense) illuminate what many people actually believe. These works *reflect* the dominant ideologies of society that many or most people subscribe to, such as consumer capitalism, gender roles, and

² See Lawrence M. Friedman, *Law, Lawyers and Popular Culture*, 98 YALE L. J. 1579 (2000). Friedman’s seminal article provides the intellectual structure for the study of law and popular culture.

commonly shared stereotypes--that is, popular culture in the broad sense.³ Similarly, works of popular legal culture reflect what people generally believe about law, lawyers, police, judges, and legal institutions—that is, popular legal culture in the broad sense.

Of course, pop culture never accurately reflects the world it depicts, for these are works of fiction, produced to entertain mass audiences and to make a profit. 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 the broader culture they purport to depict. Pop culture creators always distort reality, including the operation of the legal system, for dramatic, commercial, or ideological purposes.

Nevertheless, popular culture (in the narrow sense) can tell us a lot about the real world (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 business practices, gender roles, and family relationships of earlier times. Thus, one focus of the course in law and pop culture is to discuss what messages the film or TV show is sending and how those messages match up to real-life data on law, lawyers, trials, and the legal profession.

Second, consider pop culture as a lamp. People learn a great deal in the process of consuming pop culture. Popular culture (in the narrow sense) powerfully *constructs* what people believe (popular culture in the broad sense).⁴ Pop culture consumers are affected in ways that go far beyond mere entertainment or pleasure. Pop culture media might be the most effective teaching device in the history of the human race. To take the most obvious examples, commercials change the buying habits of consumers as they “learn” information about new products or retailers, and political ads manipulate voter preferences. 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.⁵

Indeed, legal pop culture often invites viewers to work as surrogate police, jurors, forensic scientists, judges, and lawyers, allowing them to vicariously experience and learn about the legal system from the inside. People learn details of law practice (judges wear black robes

³ See, e.g. Michael Asimow, *Jewish Lawyers on Television*, [2017] JOURNAL OF THE OXFORD CENTRE FOR SOCIO-LEGAL STUDIES (Issue 2, p. 14) (discussing stereotypical representation of Jewish lawyers on television shows).

⁴ The psychological mechanism by which this occurs is referred to as the “cultivation effect.” See, e.g., Michael Morgan, *Cultivation Analysis and Media Effects*, in THE SAGE HANDBOOK OF MEDIA PROCESSES AND EFFECTS, (Robin L. Nabi & Mary Beth Oliver, eds., 2009).

⁵ This insight is supported by research on the beliefs of law students on the first day of law school in six countries. They were asked about their opinion of the honor and trustworthiness of lawyers (surprisingly low) and then asked what sources they found helpful in learning about lawyers so they could answer that question. Close to half of the students said they found movies and TV shows about lawyers to be helpful or very helpful in learning about lawyers. See Michael Asimow, Steve Greenfield, Guillermo Jorge, Stefan Machura, Guy Osborn, Peter Robson, Cassandra Sharp & Robert Sockloskie, *Perceptions of Lawyers—A Transnational Study of Student Views on the Image of Law and Lawyers*, 12 INT’L J. OF THE LEGAL PROF. 407, 423 (2005).

and bang gavels, people address the judge as “your honor”). They also acquire broader and more contestable notions about law and justice (such as the notion that the adversary system promotes justice by convicting the guilty and acquitting the innocent). Most viewers passively soak up the messages that are transmitted to them by pop culture, although some resist those messages and form their own oppositional interpretations. Whether viewers are passive or active consumers, they employ pop culture materials to *construct* their personal views of reality (including the reality about law and lawyers). Lawyers need to know what the media is teaching the general public. Thus the subject of media effects (the lamp) is an important and controversial subject and a frequent focus of the class in law and pop culture.

In thinking about media effects, it’s important to realize that people are learning from a highly unreliable fictional source. 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; in the US, at least, perhaps 95% of criminal cases are plea bargained (and about 95% of civil cases are settled before trial); factually innocent criminal defendants are extremely rare; trials occur months or years after the crime, not the next week; jury trials have become quite infrequent; closing arguments last longer than three minutes; and lawyers are far more concerned with earning fees than pursuing justice.

The anecdotes showing media effects are legion. How is it that in France, criminal suspects demand their *Miranda* rights⁶ when arrested by the police—even though the *Miranda* doctrine doesn’t exist in France?⁷ Why do German lawyers make motions that don’t exist in Germany and believe that criminal trials are adversarial contests between lawyers (instead of judge-controlled inquisitorial trials as they actually are in Germany)?⁸ Why do frequent watchers of *Judge Judy* believe that trials in the US are run by judges rather than lawyers?⁹ Why do jurors believe that the prosecution can’t prove its case against a criminal defendant without presenting forensic evidence such as DNA or fingerprints?¹⁰ All this and more is explained by the spurious knowledge people have acquired from consuming legal pop culture. The course in law and pop culture returns again and again to the lamp effect—the enormous influence that popular culture exerts on those who consume it.

II. Structure of The Law and Pop Culture Course

Many academics around the world teach courses about the relationship of law and pop culture. They are found in every department—not just in the film, television or cultural studies

⁶ See *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* warnings are frequently shown in US pop culture products and have become part of popular legal culture. See *Course Book*, *supra* note 1 at 10-15.

⁷ See Barbara Villez, *Engrenages: Antilegalism and French Realism*, in *LAW AND POPULAR CULTURE: INTERNATIONAL PERSPECTIVES* 322 (Michael Asimow, Kathryn Brown & David Ray Papke eds., 2014) (hereinafter *International Perspectives*).

⁸ See Stefan Machura, *German Judge Shows: Migrating from the Courtroom to the TV Studio*, in *LAWYERS IN YOUR LIVING ROOM: LAW ON TELEVISION* 330-31 (Michael Asimow, ed., 2009).

⁹ See Kimberlianne Podlas, *Please Adjust Your Signal: How Television’s Syndicated Courtrooms Bias our Juror Citizenry*, 39 AM. BUS. L. J. 1 (2001).

¹⁰ See Tom R. Tyler, *Viewing CSI and the Threshold of Guilt: Managing Truth and Justice in Reality and Fiction*, 115 YALE L. J. 1050 (2006).

departments, but also in history, politics, sociology and many other disciplines. Each instructor has his or her own concept of how the course should be constructed. Some teach it as a course in legal philosophy or professional responsibility; others treat it as a course in film theory or filmmaking technique; others teach legal storytelling; and still others use the material to teach lawyer skills. The articles by Christine Corcos and Donald Papy in this symposium provide additional examples of how the course can be conceived and structured.

I try to do all of these things and more in the course of a single quarter or semester. I believe that movies or television shows about law should be regarded as *legal texts*, to be studied in the same way as Supreme Court decisions or statutes. Law in the legal realist sense is what judges and lawyers actually do and what real people think that law is, as distinguished from what's written in the books. And what lawyers and others do and believe is influenced by many environmental factors, pop culture among them. By treating pop culture products as legal texts, we learn about what lawyers and judges actually do—but we also learn about filmmaking technique, film and television business practices and economics, narratology, film history, and genre. The class always questions whether the pop culture product wrongly describes real phenomena (such as the morality of lawyers or the death penalty)—that is, the mirror effect—and how that product disseminates information and cultivates attitudes in the people who consume the product—that is, the lamp effect.

My course (and the *Course Book*) covers one law-related subject per week, each subject illustrated with a particular film or television show. I teach this material both to undergraduates and law students. Obviously, when teaching undergrads, it's necessary to fill them in on a lot of details of law and law practice that law students already are familiar with. The first third of the course consists of classes devoted to broad subjects such as the adversary system, lawyers as heroes, lawyers as villains, the life of lawyers, legal education, and law on television.¹¹ The middle third of the course looks at issues of criminal justice, including the jury, military justice, and the death penalty.¹² The final third of the course considers other areas of law, specifically the civil justice system, civil rights, sexual orientation, and family law.¹³ Obviously, I can't cover all of these topics in a given semester (much less a given quarter), but I try to strike a good balance of new and old films, movies and television shows, general topics about law and lawyers, and areas of legal practice that are important for students to learn about and that they will find interesting and relevant.

The students are required to read an assignment, watch the film or TV show that illustrates the subject of a particular session outside of class, and submit e-mailed answers to homework questions. The class then consists of two to three hours of discussion about the themes of law and pop culture arising out of the assigned reading and the pop culture product. Other instructors screen the movie or TV show in class (which takes about two hours), followed by a one-hour discussion. The grade is based on a final paper that has something to do with the

¹¹ To cover these subjects, the *Course Book* uses the films *Anatomy of a Murder*, *To Kill a Mockingbird*, *The Verdict*, *Counsellor at Law*, *The Paper Chase*, and episodes from *Boston Legal*.

¹² To cover these subjects, the *Course Book* assigns episodes from *Law & Order*, and the films *12 Angry Men*, *A Few Good Men*, and *Dead Man Walking*.

¹³ To cover these subjects, the *Course Book* uses the films *A Civil Action*, *Philadelphia*, and *Kramer vs. Kramer*.

intersection of law and pop culture (broadly defined) as well as class participation and quality of the homework.

III. The Life of the Lawyer

One of my favorite seminar sessions asks students what lawyers actually do. The vehicle is an ancient but astoundingly great film, William Wyler's *Counsellor at Law*. The movie was released in 1933, just before the advent of the Hays Code that would have precluded many of the themes in the film had it been in effect.¹⁴ The movie is entirely set in the gorgeous law office of George Simon (John Barrymore). Simon is a great litigator, but we never see him in court.

Instead, the movie captures a lawyer's day—the waiting room full of clients, the phone ringing off the hook, the need to multi-task. The clients are difficult and unpleasant people. Simon must manage a small business consisting of his partner, an associate, a paralegal, a receptionist, a switchboard operator, and other staff members (including a shoeshine boy). He must constantly negotiate tricky issues of legal ethics. Indeed, his ethical blunders threaten to engulf him. Most of all, he has to make money, because law is above all else a business. All of this is right up to date, though the film was made almost ninety years ago (and we no longer use switchboards).

Simon is an up-from-the-gutter Jewish lawyer in an era when anti-Semitism in society and in the legal profession was an ever-present reality. He has become wealthy and successful while the world is falling apart in the early years of the Great Depression. He has married a socially-prominent non-Jewish wife, yet his marriage is crumbling and his step-children despise him. He is a great lawyer who is oblivious to the feelings of those around him and his personal life is a shambles.

Here are just some of the issues the class confronts after seeing *Counsellor at Law*:

- What is the life of a lawyer like? Most lawyers don't spend their days in court (as you would expect from consuming most legal pop culture). Instead, they spend it on the phone, giving advice and negotiating rather than litigating. Clients can be repulsive people. And the lawyer's life is extremely stressful.
- Lawyers must be skillful in getting clients to trust them and to pay them. Money is all-important.
- Law practice is loaded with ethical traps. Lawyers sometimes are caught by these traps.
- Lawyers are often more successful in their professional lives than in their personal lives. In fact, alcoholism, drug abuse, and depression are much more common among lawyers than the general public.

¹⁴ See Course Book 26-28, 275-77, 306-07; Michael Asimow, *Divorce and the Movies: From the Hays Code to Kramer vs. Kramer*, 24 LEGAL STUDIES FORUM 221 (2000).

- Issues of religion, gender, and ethnicity pervade the film. The movie is full of class struggle. Simon has overcome anti-Semitism, yet the upper class gentiles who run the legal profession can't wait to take him down. Meanwhile, those in the working class hold him in contempt. Women endure defined sex roles and routine sexual harassment as low-level employees of the law firm.
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IV. Conclusion

In conclusion, I wish all the best to the past, present and future instructors who teach the course in law and pop culture. I hope that such courses will be increasingly common both in law schools and undergraduate departments. And best wishes also to the students who will be taking this course. To the instructors and to the students, HAVE FUN! But also be prepared to think hard and to learn a lot about law and a lot about popular culture.