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Chapter 45
Film and the Reconstruction of Memory

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Abstract In this chapter, I want to introduce the discussion on memory and memorials as part of the process of transition to democracy. After presenting the theoretical arguments, I wish to tell a brief account of the transition to democracy and the path that led to the *Pacto del Olvido* to finally analyze three movies that have introduced the discussion on the civil warrant the dictatorship, namely, Soldados de Salamina (David Trueba 2002), Las Trece Rosas (Emilio Martínez-Lázaro 2007), and Salvador Puig Antich (Manuel Huerga 2006).

45.1 The Field of Transitional Justice

In 1939, after a bloody civil war, Francisco Franco became Spain's dictator. The war and the dictatorship were characterized by the constant violation of the laws of war and of people's human rights. With Franco's authoritarian regime, a legitimate republican government was overthrown, and during the long dictatorship, all traces of liberalism and human rights were almost eliminated. On November 20th 1975, Franco died after a long illness and Spain began a process of transition that culminated in the passing of 1978 Constitution and the establishment of democracy. The consolidation of this process was achieved when the new democratic regime managed to stop the attempt of coup d'etat on February 23, 1981, led by some members of the military who disagreed with the transition to democracy. People still remember the moment when Spanish Parliament gathered to elect Leopoldo Calvo Sotelo, and the long hours before the coup was aborted (Cercas 2009). The beginning of Felipe Gonzalez' government, the first

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socialist government in more than 40 years, marked the end of the transition and the beginning of a solid and stable democracy (Aguilar 2008).[1]

The Spanish transition to democracy was considered to be one model to be exported, given that the elites in power negotiated their way out with members of the opposition, including the communist and the socialist parties, changing in that way a view of Spanish politics and Spanish transition that was common during the 1940s and 1950s. Indeed, the idea of a government of transition was not new in Spanish politics; what was new was the willingness to negotiate with all political forces and the recognition of the Communist Party and his leader, Santiago Carrillo, as legitimate parties in the talks to bring about democracy in the country (Juliá, n.d.). The fact that the Socialist Party PSOE and the Communist Party took part in the elections and in the process of drafting a new constitution is seen as a model of openness and political participation. However, a price had to be paid: one of forgiveness and most of all of oblivion.

The Spanish transition to democracy is presented as the result of a Pact of Forgetting (Pacto del Olvido), where all political forces aware of their crimes in the civil war were willing to forget the past in order to achieve democracy (Tusell 2005; Davis 2005). From another point of view, some authors argue that the pact was the result of precisely the memory of the civil war, given that the measures taken during the Second Republic (1931–1936/1939) led to the civil war, because of the opposition traditional elites had with regard to the egalitarian policies that were established (Preston 2008). In this sense, as Tusell and Julia argue, the transition of democracy was not a politics of forgetting, as if they did not remember what had happened, but a politics of throwing into oblivion, because they did remember very well what had happened and decided to avoid bringing it into light, precisely because they remembered very well the crimes that were committed and the ever possibility of a new civil war and a new military dictatorship. In this sense, the current politics of memory is not a politics that is supposed to remember some forgotten past; on the contrary, according to Julia and Tusell, the elites knew very well their past and decided to forget. The question is more about knowledge – given that the new generations know nothing about the war and the authoritarian regime – and about reparations, given that the victims of the war and the dictatorship are still waiting for compensations and for the recognition of their suffering (Juliá 2003, 2006a, b; Tusell 2005). However, as I will show later, the question is more complex, because memory and discussion is not present in the public sphere, in spite of the fact that there is a huge and increasing amount of publications on this topic (Juliá 1996).

According to some authors, the younger generations have the duty to know, and to do so they have the possibility to read what has been published since the very beginning of democracy. The number of specialized publications is huge, and the amount is still growing. From specialized articles to dissertations and books, the question of the period between 1930 and 1978 is very present in Spanish

[1] It is important to remember that the Spanish Civil War began because a faction of the military was against the reforms established by a socialist government. See Preston (2008).

historiography. The past has been very present in those books since the very beginning of democracy, waiting to be caught, to be remembered. However, does this mean that the public knows about the transition? Or that they even have a space to discuss freely about the civil war, the crimes committed, and the responsibility of the perpetrators? As I will show later, public discussion is limited, and there is always an attack against those that attempt to bring it into light, as the persecution against Baltasar Garzón shows (Tusell 2005; Juliá 2003; Cercas 2009; Dewey 1996).[2]

The question that remains is what is the politics of memory about? In fact there are two things that need to be taken into account: first, the politics of oblivion was about forgetting the civil war, and therefore what was thrown into oblivion were the crimes committed during the civil war, but in the process, elites took advantage of the transition and threw into oblivion the crimes committed during the dictatorship as well. Thus, the politics of oblivion is about the civil war and the dictatorship, and for that reason the politics of memory is about the crimes of the civil war and the crimes committed during the dictatorship. In any case, we need to take into account that the crimes committed by the republican side during the civil war cannot be compared to the crimes committed by the nationalist (Francoist) side, mainly because on the former there were attempts at trying the culprits and limit the excesses, whereas on the latter the strategy was one of total elimination of the enemy (Julia 2003; Vinyes 2009; Capellá and Ginard 2009).

But, at the same time, we need to take seriously what Spanish historian Santos Juliá has held in different writings: the civil war has not be forgotten; historians have written many books where the crimes, the conditions of the civil war, the dictatorship, the crimes committed by each side, all of that has been described profusely in those books and people can have access to that information any time they like (Juliá 2006a, b). But at the same time, in the public discussion, there seems to be a fear to talk about these topics, the current response to attempts to talk about the civil war or the dictatorship is that this is the field of historians, not the field of public opinion.

In spite of the fact that, as Juliá holds, historians have written about this important period of Spain's history, public discussion on these topics is still very limited. Members of the Popular Party have been connected to the dictatorship, and they have not been denounced as such. Public discussion on their participation in the dictatorship is simply avoided. Leaders like Manuel Fraga Iribarne, Franco's minister of information, still hold positions of power in his party; former president José María Aznar's grandfather supported Franco's regime, but this fact seems not to call the attention about the adamant opposition of the Popular Party to talk about the war and the dictatorship; there are accounts that publications have been affected because they talk about the participation in acts of repression of members of the Popular

[2] In the last months, two extreme right wing associations, Manos Limpias and the Spanisf falange, have denounced Garzón before the Supreme Court. They hold that persecuting the crimes committed during the dictatorship is a clear violation of the law. What is even more surprising is that a sector of the Supreme Court – a very conservative one – considers that Garzón did commit a crime. For all the news on these questions, see www.elpais.com and www.publico.es

Party or their relatives. In sum, public discussion on the civil war and the dictatorship is almost nonexistent, and it is considered an exclusive field for historians. To say it in other words, the past is very present in the books, but it has not reached the field of public opinion. The question is not only about ignorance, as Juliá holds, but rather about access in the public discussion about a past that is very present in the lives and history of Spain's right wing.[3]

Since the transition many novels and films have been written on the civil war. Even books that were written during the dictatorship but censured by the regime have seen light again and have been read widely by an educated and non-educated population. But it is film the space where public discussion on the civil war, and the dictatorship has circumvented the limitations imposed by the *Pacto del Olvido.* Film has become a sort of memorial that brings into light past abuses; it shows them directly in the public sphere and calls our attention to what "really" happened. In this sense is more effective than books and academic articles in bringing memory from oblivion, in dignifying the victims. However, as I will show in this chapter, films are no objective evidence that document the past, but it does not pretend to do so. Film shows us a version of the story, a version untold in the public sphere until now, and leaves the discussion for the public sphere. I will concentrate on three films in order to argument my case.[4]

In this chapter, I want to introduce the discussion on memory and memorials as part of the process of transition to democracy. After presenting the theoretical arguments, I wish to tell a brief account of the transition to democracy and the path that led to the *Pacto del Olvido* to finally analyze three movies that have introduced the discussion on the civil war and the dictatorship, namely, Soldados de Salamina (David Trueba 2002), Las Trece Rosas (Emilio Martínez-Lázaro 2007), and Salvador Puig Antich (Manuel Huerga 2006).

Transitional Justice is an academic field and a space of public policies that is still growing. In different parts of the world, transitional justice policies have been applied in order to face a past of authoritarian governments and of grave violations of international human rights and international humanitarian law (Bell 2009). Originally the idea of transitional justice was concerned with the criminal prosecution and sanction of those responsible of grave crimes, and for that reason criminal law discourse dominated the field. Nowadays it is a field that covers different disciplines and goals.

The idea of transitional justice as a field emerges with the processes of transition in Central Europe and Central America. It is true that before these processes

[3] Spanish scholar Francisco Muñoz wrote a book on Mezger's participation in the Nazi regime. This book provoked a strong reaction, mainly because of the intellectual influence Mezger had in Spanish law, especially during the dictatorship (Muñoz Conde 2002; Benavides 2008).

[4] This text is part of a broader project wherein I analyze different transitional justice problems and show alternative views to them. I assume that justice – social and criminal – is necessary in processes of transitional justice, but I also think that other instruments must be used in order to dignify the victims and open the way for reconciliation and stable democracy (Benavides 2009).

people talked about transition to democracy, as in Spain and Argentina, but the idea of exercising a justice of transition is new. These debates focus on the need of facing the crimes of the past with a process wherein criminal justice played a central role (Arthur 2009). The term and the concept of transitional justice found a place with the collection edited by Kritz and published by the United States Institute for Peace (Kritz 1995). At the beginning, transitional justice was identified with criminal justice, but in 2000 Ruti Teitel published a book where she summarized the main debates and showed that transitional justice covers different disciplines and aspects, such as memory and memorialization, truth and reconciliation, and institutional transformation (Teitel 2000).

The current framework of international law makes almost impossible to establish policies of amnesties and forgiveness. However, during the Spanish transition such policies were common coin and were considered to be the only way to deal with the past (Hayner 1994). But Spanish involvement in the field of transitional justice, with the prosecution of the crimes committed during Argentinean and Chilean dictatorships, has made the eyes turned onto their own situation, and now we see attempts to prosecute the crimes committed during the Francoist authoritarian regime (Diario El País, 17th October 2008).

According to a study of the dynamics of transitional justice, all the mechanisms of transitional justice, be it truth commissions, memorials, criminal trials, and vetting, all of them introduce questions about the truth and about national identity, history, human rights, cultural practices, and good governance (Fletcher et al. 2009). For that reason, the question is not about which mechanism is the best in general, but rather which mechanism is better to improve the lives of those who have been affected by violence. In these cases, a context sensitivity approach is important in order to avoid undesired effects, such as more victimization and violence (Leonhardt and Gaigals 2001; Leonhardt 2008).

Transitional justice poses questions about the nature of the rule of law during times of transition. If the law is supposed to be permanent and stable, how is it that it can be used during exceptional times, like transitions to peace or transitions to democracy? In the first wave of transitions to democracy, criminal law was used as part of a strategy of revenge, as in Portugal, but in most cases elites decided to erase the past and to have a fresh start. Justice, reconciliation, and even acknowledgment of the victims were considered to be goals too high to sacrifice peace or democracy. Peace and democracy became high goals that legitimized a politics of oblivion and forgiveness (Barahona et al. 2002).

The paradigmatic case of oblivion is the Argentinean and Chilean cases, where the trials against the culprits were stopped due to laws of due obedience and final full stop, in the former, and auto amnesties, in the latter. But the prosecution that was brought to Spanish judges, mainly Judge Baltasar Garzon, led to the constitution of a new situation for former dictators. If they were not going to be tried in their own countries, international or transnational justice was ready to do their job. Not surprisingly, both the Argentinean Junta and members of the Chilean dictatorship now face trials in their own countries for the grave crimes they committed during their regimes (Aguilar 2008).

The old debates between justice and legality or between justice and peace or democracy seem to be overcome, because current international law mandates that those who are responsible for human rights violations or war crimes need to be tried and amnesty or forgiveness cannot be granted in those cases. Transitional justice cannot be identified simply with policies that grant amnesties to authoritarian regimes, but neither can it be identified with criminal law and criminal trials. According to a Human Rights Watch study on the impact of international justice, justice and democracy or peace cannot be seen as opposite, and overall justice cannot be sacrificed in peace processes or transitions to democracy (Human Rights Watch 2009). The discussion on transitional justice has moved from a discussion on the importance of criminal trials, to a discussion on the necessity or political possibility of having criminal trials, given the conditions of the transition and its relative strength. The field of transitional justice is a complex field where questions of memory, truth, institutional transformation, and memorialization enter the public arena to be discussed in a democratic manner.

45.2 Memory and Memorialization

Traditionally the idea of justice in transitional times was identified with criminal trials against those responsible of grave crimes. The criminal justice system was vested with a symbolic power to deal with the past and to mark the beginning of the process of transition. The model of Nuremberg symbolizes this conception, because it sets the end of European war and the beginning of peace. At the same time the memory of the conflict is built within the criminal process. What we knew from the war was related to the trials against members of the Nazi dictatorship. More than novels and films, the criminal trial and its final account seemed to give the "real" story about the war and the regime. It is later that films take the lead in the presentation of the story, but they usually did it based on the main facts as they were presented in the trial. "Judgment at Nuremberg" (1961) is a film that dramatizes the Nuremberg Trial and even shows us some footage of the concentration camps that were actually shown during the trials. The fact that the story is told around the trial aims at having the viewer know that what is told there really happened, that the memory of the war and the memory of the victims are what were told in those trials, and that the site for memory is the criminal trial.

However, in times where criminal law and criminal justice are not the only transitional justice instruments, there is a peril in assuming that the criminal trial is the site for memory. We are brutally reminded of this fact by Eyal Sivan's film "The Specialist: Portrait of a Modern Criminal" (1999), where we see actual footage of Adolf Eichmann's trail. In fact, the film is a sort of documentary of the trial, everything we watch is taken from the trial, nothing is created, except that the kind of edition the film is given lets us with a different sense of the person Adolf Eichmann was. From viewing the film, we get the impression that Eichmann was a mediocre officer that simply followed orders and that the trial had a sort of illegal sense of

revenge against someone who just limited himself to obey the law. Historians has taught that this is not the case, but as in the Spanish case, public discussion on the topic is necessary in order to reconstruct memory and not limit it to trials or films. A recent film, Tarantino's "Inglorious Basterds" (sic) (2009) gives us a different, nonhistorical, account of the war. Human rights violations are presented there as if they were justified only because of the identity of the perpetrators. It seems to be a justification of violations of the laws of war only because the soldiers led by Brad Pitt were fighting the war on the American side, by definition, the good one.

In the literature on transitional justice, there is a discussion on criminal justice's retributive role and its importance vis a vis other goals such as democracy and peace. Truth and reconciliation commissions are debated because a part of the literature sees them as instruments to construct a nonjudicial memory in order to have reconciliation without punishment and to have a symbolic memory that deals with some parts of the past, those that do not endanger the agreements elites have reached. In other words, some instruments of the politics of memory are criticized because they reconstruct a partial memory of the past, one that closes it and that does not leave space for constant reconstruction. Democratic memory is usually seen as a substitute of criminal justice that avoids calling elites before justice to respond for their crimes and that reconstructs memory in a way that is authorized by the same elites (Turner 2008; Bell 2009; Kritz 1995).

Memory has traditionally been reconstructed in sites such as trials and truth commissions. But memory can also be reconstructed through nonofficial truth commissions or memorials and artistic productions, like films or theater performances (Bickford 1999a, b, 2007). Memory is an important part of peace building processes and a way to understand conflicts. Memory allows communities to have a common sense of belonging and common identity. As Anderson has put it, national and collective identities are built upon remembering and forgetting (Anderson 1991). Memory can be perpetuated through processes like memorialization and the construction of monuments honoring the victims. This kind of transitional justice instruments allows societies to rewrite their history and to recover narrations from the past. It is also used to help victims to start their process of symbolic recovery and a process of reconciliation by recognizing traditionally oppressed and forgotten groups (Naidu 2006). However, this process requires the agreement of both parties; they have to be willing to rewrite history and to recognize past crimes. In the Spanish case, such recognition did not emerge during the transition. The elites negotiated the political participation of the Communist Party, but it was recognition of their importance for the transition, not the recognition of the need to have a more open approach to the past, or of the persecution member of the Communist Party were victims during the Francoist regime (Juliá 2006a, b, n.d.). But past crimes were not recognized; there was a common understanding that the past was not going to be revisited, at least not publicly; this was going to be the field of historians.

In spite of the attempts of governments to erase memory or to hide it, it emerges in a way or another. The challenge is to have memory emerge in a positive way, that is to say, allow victims to remember their past and prevent those crimes from happening again in the future. Memory and memorialization satisfies the

desire to be recognized, but at the same time it dignifies victims of crimes through a reexamination of the past. Memory and memorialization became a field of symbolic dispute; meanings and interpretations about the past are part of the discussion. Debates about the meaning of the past pose different hermeneutical circles into the discussion (Gadamer 2006). It is not a matter of who has the objective truth, but how democratically that truth and that memory have been reconstructed. Memory and truth are the result, or should be the result, of a participatory process where all the voices, especially those from the victims, are heard. As a final result the reconstructed memory helps in the construction of a new nation, a new community, or a new ethnic identity. According to Mneimneh, remembering the past is in itself transformative, it changes the past that is remembered, it puts it under a new light.

However, the past can be transformed, or it can be confiscated, becoming the exclusive property of one group or one political party. But, what about that event where the past is simply forgotten in the public discussion? By leaving the past to historians, there is a process of confiscation, because, in a sort of neoliberal nightmare, what we are and who we are as a community is left to the expert opinion of historians, the past they reconstruct becomes the past *per excellence* (Bickford 1999a, b; Naidu 2006). Thus, memory represents a complex link between politics, trauma, collective memory, and public art (Weisntein as in Barsalou and Baxter 2007, 4).

Monument building to remember victims is usually the product of the recommendations truth commissions make, as it was the case in El Salvador and Chile. It can also be the product of processes that emerge in countries that are mature enough to face a past that is painful and that is often the cause of divisions between the parties. In 2007, in Catalunya (Law 13/October 31, 2007) and in Spain (Law 52/December 26, 2007), laws of memory were approved as a result of pressures social movements exercised to face the past. However, it is often questioned how mature Spanish democracy was to face memory and to go back to the past and discussed in a public forum, not just in the expert site of historians. Commemorating particular dates, building public spaces to remember victims of grave crimes, giving new names to streets or recovering old names, all of this actions help in the construction of a new memory, one wherein the victims of the past are included (Aguilar 2008).

But memorials have been object of criticism, because some people see them as mere symbolic reparations that have the effect of diverting the attention from the material side of reparations. However, it is important to take into account that victims do not fight only for money or material goods, they also fight for recognition, for memory, and for a symbolic transformation of their world. Unlike the formal reconstruction of memory that is made in criminal trials, memorials and public reconstruction of memory is a more detailed process that is expressly aimed at facilitating processes of remembering and recognition of victims. In such a way, memorialization is not a substitution of material reparations or a simple symbolic compensation for the crime committed in the past. On the contrary, memorialization has a variety of purposes that point at the process of building a culture of peace and to deal with issues such as dignity, human relations, and collective identity. In that way the collective construction of memory contributes to human development and to the regeneration of human capital that is often destroyed during times of conflict and oppression. Memorials need to be collectively and democratically built, because

in that way they help to dignify the victims, but they also need to be continuously resignified, because the passing of time will alter their meaning and could become meaningless to new generations (Barsalou and Baxter 2007).

But memory is not only about remembering. People remember because they need to be recognized, to be dignified. At the same time, one of the purposes of memory and memorials is reconciliation between the parties. In any case, as it was mentioned earlier, memory and memorialization are not substitute of trials or other mechanisms of transitional justice; they are a complement to the search of justice by other means. Memorialization has the following purposes:

- To construct truth or to document specific human rights violations
- To build a specific place to allow victims and their families to grieve for the lost ones
- To offer symbolic reparations to honor the victims of violence and to reestablish their reputation
- To be a symbol of the commitment of a community with some values, such as democracy and the respect of human rights
- To promote reconciliation by rebuilding national identity and to be a means to repair the damaged relations between groups
- To promote the civic commitment and education programs that deal with the past and that establish a dialogue within the community to talk about that past and, in such a way, to promote more discussions within the group to reach sustainable peace
- To have a new curriculum to allow new generations to have a more precise knowledge of the past and where there is a space for victims and their stories
- To facilitate the conservation of places that are symbolically important to different groups in society, as long as they respect cultural differences and other groups' history

There are different kinds of memorialization, and they varied according to the kind of conflict. In cases of genocide, memorialization usually gravitates around the exhibition of human remains, in order to show that the genocide happened and who they victims were. In some cases these remains are left in the site where they were found, with the purpose of avoiding attempts to deny the facts of the genocide. In cases of forced disappearance, the body of the victims is missing, and what is left is their pictures or the places where they were tortured and killed. For this reason, in Argentina the building where the ESMA (Escuela de Mecánica de la Armada) was, known as the place where many crimes were committed, has been transformed into a museum, with the purpose of remembering the victims, and most important, given the high level of impunity in this country, to make explicit the institution that is responsible for their deaths and disappearances.

National projects of memorialization reflect the goals of communities, rather than the realities of those countries that are in a process of transition. Memorials allow the consolidation of new ways of imagining the nation. Memorials seek a symbolic reconstruction of the past, and in that way they eliminate cultural violence and contribute in the process of building a culture of peace. Through the documentation of the past, or by bringing the past into the present, memorials contribute to

the imagination of a new future. That is the reason why they take a long time in showing their results. Memorials show the community we want to imagine; it is open to debate and discussion, making evident the divisions between people. They represent a challenge to imagine what unites people and what divides them and call to their imagination to overcome those differences. It is interesting to note that in Bosnia, a country that is coming out of war and genocide, there has not been agreement on how to depict the past. In a public square in this country, they only could reach an agreement on the construction of a statute of karate B movies Bruce Lee, someone foreign to their country and who represents precisely the precarious unity that characterizes this country (Kgalema 1999; Benavides 2010). To conclude, it is important to take into account the following elements:

- Memorialization is a process that is politically charged and that can even bring to light the worst side of a community.
- The process of building memorials should be local or national initiatives, because those that are promoted from abroad are doomed to fail.
- The importance of community cannot be over emphasized, because they know which sites are important as a contribution to memory. Outsiders do not perceive the importance of identity in the community.
- Memorials should be dynamic, because memorials that are not connected to a process of education for peace or the process of construction of a culture of peace lose their meaning with the passing of time.

Archival preservation is an important task that is promoted after a period of authoritarian rule or an armed conflict. Archives help in documenting human rights violations and in determining victim's identities. Film as such is not part of the archival imperative. In some cases, as the footage we saw in the Nuremberg Trial that was shown in the film "Judgment at Nuremberg," film preserves the past and shows us images that otherwise would be unknown to us. It gives a dramatic sense of reality that words cannot have. However, as Bickford holds, history demonstrates that it takes a generation or more until people are able to process the trauma of earlier periods (Bickford 1999a, b). Films usually open the path to talk about the past; by fictionalizing the past and showing some aspects of it, they introduce in the public discussion aspects of the past that otherwise would remain in history books. I agree with Santos Juliá that remembering the past does not mean to uncover what has always been in the dark. During the Spanish transition people decided to forget, they made a pact to forget what they remembered. They took the past from public discussion and left it for historians' books. Film uncovers that past, taking them from the history books and puts it in the public discussion.[5]

[5] Film can also be used to cover reality, to show a different side of the story. One interesting use of film is Vladimir Montesino's strategy in Peru. He released several videos in order to show how he corrupted members of the government and the legislature, in an attempt to show that if everyone was corrupt, then no one was corrupt. These videos became known as the vladivideos (Vich 2004).

In the next section, I will show how Spain arrived to a pact of forgetting, and then I will analyze three movies that uncover that past. I must stress that these films do not bring to light a past that was unknown, but rather they bring into the public discussion a past that because it was known was thrown into oblivion.

45.3 Spain and the Pacto del Olvido

The civil war lasted almost 3 years; some people even called it the war of a 1,000 days and ended with about 600,000 dead and numbers of injured people from both parties. Republicans – the side of the legitimate government – lost the war and had to live in an internal exile or to run away to France or to Latin America. After the end of the war in 1939, Franco consolidated his power and made approaches to Italy and Germany, which had helped him fight the war against Republicans. Republicans believed that by fighting against Germany and Italy in WWII, they would get support from the allies, especially England and France. But post WWI is a story of betrayals against the Republican side, because the allies did not help fight the war in Spain against Franco's dictatorship. In the 1950s, as a result of the Cold War and the new balance of world power, the United States, during Eisenhower's administration, ended Spain's isolation and gave new legitimacy to Franco's power. American and European recognition brought legitimacy and stability to the dictatorship and helped the consolidation of the regime. The 1960s showed progress in economic matters and allowed the beginning of a sort of liberal thought within Franco's culture (Tusell 2005, 266). As Tusell shows it, Franco's long agony also meant the long agony of a decadent regime. In November 1975, Franco finally died and people – especially younger generations – realized that with his dead significant transformations were about to happen. But no one imagined the radical change that Spain was going to experience during the last part of the 1970s and the early 1980s. With Franco's death, a long and complex process of negotiation between the elites and the opposition began.

There are at least three figures in the transition to democracy. King Juan Carlos I had been appointed King of Spain, following Franco's instructions. However, the role he had to play during the transition was different from the one he assigned to himself. King Juan Carlos I saw himself as the King of Spain and not only as the king of one of the sides in the country. He wanted to overcome the idea of the two Spains that characterized the civil war. With the strong commitment to democracy, as the only way to save monarchy, King Juan Carlos played an important role in the transition and in the process of negotiation between the parties. In his task he had the help of Adolfo Suarez', former secretary of the Movimiento Falangista, and a person that seemed to be very close to Franco and to his legacy. But Suarez understood very well Spain's position in Europe and the importance of having a democracy in order to be part of Europe. Surprisingly, those – like Fraga Iribarne – who wanted to have some reforms but within the dictatorship did not have much support and could not become strong enemies to the opening of the system. And the last one

is Santiago Carrillo, head of the Spanish Communist Party, who was intelligent enough to recognize that democracy was the only way his party could be part of Spain's politics and who help in keeping things within the limits of democracy even after strong attacks from right wing extremists. Carrillo accepted that the Communist Party broke his links to the Soviet Union and in that way helped in the transition to make it a European Communist Party, which meant a party compromised to democracy and to peaceful transformation in politics (Cercas 2009; Tusell 2005; Aguilar 2008).

Spanish transition to democracy is characterized by a total lack of criminal trials or any kind of accountability. The memory of the civil war, the bloody repression during the first part and the last part of the dictatorship, made advisable that the transition be negotiated and that a broad amnesty was granted to members of the government and perpetrators of grave crimes. A strong critic of the transition has written that the pact between Franco's supporters and anti-Francoists was in benefit of the members of the authoritarian regime. By appealing to the motto national reconciliation, members of the government took advantage of the process of transition and made sure that no trial or truth commission or revision of the past was made. In the words of Franco himself, everything in this field was tied and very well tied (Colomer 1998).

Spanish transition has been presented as a peaceful transition, but Paloma Aguilar shows that it was not the case. Between 1975 and 1980, there were more than 460 deaths, and in a period of 6 years, there were more than 40,000 people killed in terrorist attacks (Aguilar in Barahona et al. 2002: 147). The Pact of Forgetting was made in a context of extreme confrontation, especially between members of ETA and members of the military, and moderation, especially on the part of parties like the PSOE and the Communist Party and the faction led by Adolfo Suarez in the government. The reformism approach and the pact of forgetting is the result of memory but also of the extreme radicalization of some sectors and the existing tension in Spanish society. Parties in the opposition feared that the military took power again and that democracy was not reached. They moved from demanding a radical transformation and retrospective justice to a more humble reform, one wherein Spain could have democracy and in exchange the past was going to be thrown into oblivion. Unlike other transitions, "never again" meant the non-repetition of atrocities, in Spain this "never again" pointed at the civil war, and the transition was made to never again have another civil war or another dictatorship. As a result, critics stress the limitations of Spanish democracies and the permanence of violence due to unresolved issues such as the Basque question and the presence of different nations within the Spanish state. Spanish Congress passed a law granting amnesty to those who took part in the civil war, in order to consolidate what they saw as a process of reconciliation with the past and with those who fought on the opposite side. But the law granted amnesty to perpetrators of grave abuses and human rights violations. In that way, the Pact of Forgetting threw into oblivion the crimes committed during the civil war and during the dictatorship. Historians could do research on these topics, but public discussion on these topics was closed; the pact granted that the public would not know about the past and that only experts would be able to talk about it. But film, as a different field, showed that public discussion was still possible, that

the past could be fictionalized in order to make it real, and that remembering what did not necessarily happened would help us to remember what really happened.

In the past years, Spain and Catalunya have passed laws of memory, in order to open public discussion on the legacy of the war and the dictatorship. In spite of the fact of this commitment, the fact remains that Spanish society in general is unable to deal with the past. When Baltasar Garzón tried to bring Franco and his supporters to justice, right wing critics mocked him for bringing to trial dead people or for even attempting to bring into public discussion Spain's past of torture and human rights violations. Extreme right wing groups have made attempts to impede the search into the past. They have accused Garzón of violating the law or of politicizing justice; the only charge they make is Garzón attempts to bring the past into public life, to finally have a discussion about the legacy of violence and torture that many members of the right share. So far he has failed, and the pact of forgetting is still very much alive (against this position see Davis 2005). In the legal and judicial persecution against Judge Baltasar Garzón, one of the accusers, the Falangista Movement, has event held that Garzón is responsible of libel because of his statements about the commission of crimes against humanity during Franco's dictatorship (Diario El País, February 14th, 2010).

45.4 Film and the Recovery of Memory

In an analysis of Spanish cinema after the end of Francoism, John Hopewell holds that the civil war has been a central topic in Spanish films. The long postwar determined that the generation that lived the war tried to go back to prewar times, in an attempt to reach a sort of dreamland moment where the war was not present (Hopewell 1989). Spanish films tried to reproduce the war and to show its ferocity, but they did not question the transition to democracy, they did not make calls for the sanction of those who were responsible of the war, and they just showed what happened, without making accusations. As Hopewell shows, Spanish films used to depict extreme acts of violence, as a sort of psychological escape to the real acts of violence that were suffered during the war.

Films like *Las bicicletas son para el verano* (Jaime Chavarri 1984; based on Fernando Fernan-Gomez play) and *La lengua de las mariposas* (José Luis Cuerda 1999; based on Manuel Rivas short story) show a Spain that was trying to survive before the war, but at the same time they show a world of hope during the Republican government that was brutally shattered by the war. The last scene of Chavarri's film is very telling in this respect, a little boy running from the bombardments in a metaphor of a world of freedom that the war and the regime to come ended or the little kid, in *La lengua de las mariposas,* who was very close to his republican teacher but who is forced by the circumstances to commit an act of betrayal, because of the logic of the enemy that existed at the beginning and during the war.

In 2001, Spanish writer Javier Cercas published a novel about the failed execution of one of the founders of the Falangista Movement. Rafael Sánchez Maza was

captured in Barcelona – then under republican control – when he was trying to escape to France. Given his importance he was about to be executed by the political police, as it was the case with José Antonio Primo de Rivera on November 20th, 1936, apparently abandoned by Franco (Preston 2008). But facing the moment of the execution, Sánchez Maza managed to escape, and when soldiers were sent to find him and take him back for the execution, he managed to escape death. According to Sanchez Maza's account, a soldier saw him but for unknown reasons let him escape. The book begins trying to account for this moment, and it seems a praise of this Falangista writer. However, the novel is more about the writer's search and how she has to face the act of creation. But at the same time is a story of redemption and humanity. In the novel Cercas finds the soldier, Antoni Miralles, and when he asks him why he decided not to kill Sánchez Maza, Miralles just answers asking him why. That very moment, when the war is lost, when it makes no sense to kill someone, Miralles a republican soldier finds humanity in himself to not kill that defeated person. At the same time, the book shows the big difference between Republicans and Francoist, because after the war it began the worst repression, against defenseless people, people who were defeated, whose deaths made no sense, and nevertheless were killed.

Cercas' book became a success, and people started talking about the past, about the crimes committed, and about the difference between Republicans and Francoists. Film director David Trueba adapted the novel and made it into a film. The main character became a woman, but most of the characters were the people who actually took part in the events that are narrated in the novel and that Cercas tries to investigate. The main character, played by Ariadna Gil, is a journalist who is trying to do research for a real story. And the story and the persons showed in the film and in the novel are real.

The film takes from the novel the main point, which is the character of the soldier who decides not to kill. Some people read the book as a defense of a Falangist writer, but a more precise approach is to read it as a defense of virtue. In this way was read in the film, and the film is more about what Trueba and Cerca call the instinct of virtue. According to them, the fact that Miralles, a person who has been fighting in the war for almost 3 years decided not to kill, is a mysterious question that could only be explained by appealing to an instinct, one of virtue (Cercas and Trueba 2003).

The film introduces in a clear way a very central aspect of Spanish transition to democracy, which is the difference between the Republican side and the nationalist (Francoist) one. Right wing defenders of the pact of forgetting hold that Republicans and nationalist committed horrible crimes and, in order to avoid confrontation, it is necessary to forget the past and to forgive those crimes that were committed. But as Cercas holds, the republican government was a legitimate one; they were defending a legitimate system, whereas Francos' troops were the rebellious side, one that finally imposed an authoritarian regime and that was against workers' rights. Moreover, as I mentioned earlier, the crimes committed during the dictatorship show a lack of virtue and the more pure sense of meaningless revenge.

The war ended with the total victory of the nationalist side. Franco did not want just to win the war, but wanted total defeat of the enemy. As Preston shows, at times,

his strategy appeared strange, because he took too much time in moving from one position to another, just for the sake of having a total victory, of exterminating the enemy (Preston 2008). One of the questions forgiven during the transition was the massive executions occurred after the war. One case that was part of the oral tradition of the civil war and the postwar period was the execution of 13 women in Madrid on August 5th, 1939. This case became known as Las Trece Rosas or Las Menores, because many of the executed were under age.

In 1985 Jacobo García Blanco-Cicerón had brought to light this case, but it was published in a history review – though for the general public – and for that reason it remained relatively unknown. In 2004, journalist Carlos Fonseca wrote a book on the case and told a complete story of the execution of the *Trece Rosas.* The book was discussed, and there was some public discussion on the topic. However, it was with the film *Las Trece Rosas* that the case reached the general public, and more open discussion on the topic occurred.

As Fonseca shows, with the defeat of the Republicans in Madrid and the fact that many leaders had to run away to France or to Latin America, some young people were in charge of reorganizing the Socialist Youth, with the hope of recovering democracy in Spain. But these women did not represent any danger for the new regime. Nevertheless, Franco's regime launched a persecution against those who had a leftist past; some of them were arrested, some turned themselves in, and all of them were sent to prison. Political police tortured them and commit grave crimes against those women who were sent to prison.

While being in prison, two men killed a member of the Guardia Civil, his daughter, and his driver. This crime provoked the regime's bloody revenge. As a response to the crime, 15 women and 43 men – who were already in prison when the crimes were committed – were tried and sentenced, with two exceptions, to death as accomplices in the assassination of the members of the Guardia Civil and his daughter and driver. Finally, on the night of August 5th, 1939, they were executed.

Fonseca's book brought about discussion on the acts of revenge during the first days of Franco's regime. The book was followed by a documentary, entitled *Que mi nombre no se borre de la historia*, the last words in the letter one of the executed wrote to her mother, wherein some of the victims of the repression and some of the relatives of the executed were interviewed. In 2007 a new film based on Fonseca's book was released. In this film the story of the *Trece Rosas* is told for the public. The most important effect of the movie, in spite of its melodramatic character, is the fact that brings into the public discussion the repression against the youth after the end of the war. This kind of movies shows to the public some facts that were evident during the transition but that because of the need of having democracy were thrown into oblivion.

Salvador Puig Antich was a Catalan adolescent who took part in the Movimiento Ibérico de Liberaciòn MIL, an anarchist guerrilla that wanted to end the dictatorship and that appealed to armed violence to reach their goals. The movement tried to finance itself by committing rob attacks against banks in Barcelona. One of these attacks went terribly wrong, and the police had leads that finally ended with the imprisonment of some of the members of the group. When Puig Antich was going

to be arrested, he resisted and killed one police officer. Witness accounts proved that the officer's death was not intentional, but the regime nevertheless prosecuted and asked for him the death penalty. In a military trial, with violation of due process of law, as it was common during the dictatorship, Puig Antich was sentenced to death. His only resource was appealing to an official pardon granted by Franco himself, but ETA's assassination of Carrero Blanco's – Franco's supposed successor – made this alternative impossible. Puig Antich was executed on March 2nd, 1974, with the general outrage of parties in the opposition (Escribano 2001).

The final part of Franco's regime was characterized by an increase in repression. However, death penalties were rarely executed, and when Puig Antich was sentenced to death, people thought that he was going to be pardoned and his sentenced exchanged for prison. But Carrero's death brought about revenge from the government, and, as in the first years of the dictatorship, needless acts of revenge were very common. In 2006 Manuel Huerga directed a film based on the life and execution of Puig Antich. The film brought about discussion not only because it showed a regime that was eager to kill even when that was unnecessary, showing the complete lack of what Cercas calls the instinct of virtue, but at the same time it showed the responsibility that the left had in not stopping the execution with the same eagerness that they showed in other cases, mainly because they did not want to be associated with a group like MIL.

The film and the script was done with Puig Antich's sister's assistance, and it shows their point of view about the events. One of the points they stressed is the need to revise Puig Antich's case, because he was sentenced by an illegal regime, with violation of the due process. However, the case reached Spanish Supreme Court, but given the power of the conservative side in the Court, the case was not revised, and Puig Antich's sentence is considered, for Spanish courts of law, a legal and valid sentence to death. The film shows precisely the fact that he did not deserve the death penalty, that he was killed only because ETA killed Franco's closest allied, Carrero Blanco, that military trials were a mock of justice, and that the transition should deal with this fact. But the Supreme Court's answer shows the vitality of the pact.

45.5 Conclusion

Spanish transition was the result of a pact wherein elites decided to throw the past into oblivion. Crimes committed during and after the civil war were granted amnesty, and perpetrators benefitted from this pact of oblivion. Research on the past did not reach public discussion, people did not know what happened, and those who did decided or were forced to forget it. According to this pact, memory is the job of historians, and for that reason they are the ones in charge of investigating and bringing the past into light, but a light that is limited to the historian's field.

Novels and films represent a new way to bring to the general public the discussion about the civil war. The right criticized every attempt to bring the past into

light, accusing the left of provoking revenge and putting democracy in danger. However, the success of the movies analyzed in this chapter shows that memory is still an important and unresolved past of Spanish transition. So far, only movies and novels have been able to circumvent the pact of oblivion, but it is film, because of its language and the impact of its images, the one that has reached the general public.

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Chapter 46
The Impact of Film and Television on Perceptions of Law and Justice: Towards a Realisable Methodology

Peter Robson, Guy Osborn, and Steve Greenfield

Abstract This chapter examines an issue which has attracted only limited attention in the literature on law and popular culture – namely, the impact of popular culture on public perceptions of law and justice. It examines the context in which the study of popular culture in relation to law has developed and its principal goals and the working assumptions of those engaged in this work. It examines work that has been carried out specifically on how perceptions of law and justice seem to be affected by popular culture. It notes some of the methodological issues that have emerged in these studies and goes on to look at what kinds of limitations are inherent in such kinds of work and how these might be addressed.

46.1 Introduction

For the law, film and television are of significant contemporary importance. Writing about film, Reichmann (2007–2008, 457) noted that cinema is now perceived as far more than mere entertainment and that 'cinema – fiction, documentary and other genres – is perceived not only as an instrument for the expression of thoughts and reflections, but also as a sufficiently rich practice from which it is possible to learn about other practices, and, specifically, about law'. Whilst cinema is undoubtedly important, it would be a mistake to overlook the role of television; '…while the law

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has always been what we as society have created, it has also become something else – what we see on TV' (Salzmann and Dunwoody 2005, 412). This chapter seeks to further explore the importance of these areas of popular culture. Whilst noting that it is notoriously difficult to define exactly what we mean by popular culture, and recognising the highly nuanced and often subjective use of the term, we use the same working definition as given by Papke (2007, 3) of '…cultural commodities and experiences produced by the culture industry and marketed to mass audiences'.

Our own interests in the area have been documented in some detail elsewhere (most recently, Greenfield et al. 2010), but this chapter seeks to go further by charting developments which have begun to examine the impact of these depictions. Before we turn to these methodological developments and shifts, it is important to reconsider what makes law such an attractive medium for film and television. In our discussions of the attraction of the law, much has been made of the geographical, physical and emotional characteristics of the law and how this can be utilised by a variety of media. Perhaps most crucially for this, the visual attractions of the law are writ large. Both television and film necessarily play upon our preoccupation with the visual, and the law itself is in many ways ocularcentric (Greenfield et al. 2010; Douzinas and Nead 1999; Jay 1999). The symbols of the law are such a constant factor in the lives of citizens that there hardly seems a time when people do not identify with a given range of 'justice' signifiers. The wig and the gavel are recognised by schoolchildren (Machura and Ulbrich 2001, 118) and the scales of justice feature to indicate that any narrative is moving into the adjudicative phase of the legal process (Greenfield et al. 2007, 385–389), so these visual depictions can be seen to have a wider resonance.

Much work in the area has stemmed from use of this visual material in teaching, and film and TV have been used as vehicles to illustrate key issues and problems. Moving into the wider sphere of how justice in general has been portrayed, critics have always operated on the assumption that these various images and cultural perspectives have been somehow influential. Indeed, in one of the first collections of essays on law and film, much of the volume consists of essays that were influential in shaping the careers and lives of the contributors to that volume, (Denvir 1996) and we have similarly found that the visual has impacted upon us. For example, in the preface to *Film and Law: The Cinema of Justice*, we detail the films and visual media that have personally inspired us (Greenfield et al. 2010, Preface). Using this notion of personal impact and individual perception as a point of departure, this allowed us to construct a working hypothesis that this may be universal, or at least that it needed further exploration. Whilst it would be perfectly acceptable to leave these influences as broad markers of transition from one set of social norms and values to another, we have found this to be somewhat unsatisfactory. Our response was that these films had influenced the ways in which lawyers' roles were perceived for both the public and practitioners. There was, however, a need for greater precision. Why had one film been taken on board and formed part of the legal consciousness and others not? We have in our subsequent writing and teaching sought to make this a core element. If, for instance, a film such as *To Kill a Mockingbird,*

or a television programme such as *LA Law*, is claimed to have influenced a generation, we need to go beyond the descriptive or impressionistic and illustrate or demonstrate this.

On the basis that we need to go beyond the purely descriptive, we need to have some tools of analysis to enable us to provide this. The key issue is also why we are looking at these phenomena. Whilst it is of archaeological interest how representations have changed over time, this in itself does not provide justification for further inquiry. What is vital is to seek to identify not only how and in what ways these portrayals have changed but why these changes are significant. In simple terms, how have they influenced members of society? Our initial focus has been on those actors with whom we have most direct contact – law students. Whilst this is a valuable and worthwhile focus, we are conscious of the need for scholarship to range well beyond this group. What follows in this chapter is an attempt to locate this trajectory of work within the developments in education that we have observed, as well as offer some thoughts on the problems facing those of us who want to provide a clearer picture than currently exists at the end of the first decade of the twenty-first century. By their very nature, the narrow concerns of legal scholars have often meant that similar interests in cognate areas have been either underappreciated or ignored. Hence, when one looks into areas exploring the nature and rationale for decision-making in general terms, one finds psychologists carrying out work on precisely the issues with which legal scholars have an interest (Pennington and Hastie 1988). In order to address the possibilities of empirical work looking at impact, we first review developments in law and popular culture more generally.

46.2 Developments in the Scholarship on Law, Film and Television

The scholarship in these areas of law and popular culture has been divergent and diverse, emerging as it has from the work of scholars operating in a variety of disciplines. Sometimes, the scholars have been working largely in isolation. Here we are thinking particularly of historians such as Norman Rosenberg and comparative cultural studies specialists like Carol Clover. Whilst much of the scholarship emanates from writers in Anglo-American jurisdictions, the contributions and developments elsewhere are noteworthy (Robson 2009), if currently somewhat sparse. There has, for instance, been great interest from Italian scholars but a more limited textual output.[1] In addition, other areas like Spain enjoy a flourishing literature, but the scholarship operates within a context of highly professionalised legal education,

[1] Major international conferences have been organised in Bologna – *Rappresentazione della Giustizia nel Cine* (January 2004) and in Palermo *Mafiosi nel Cinema: Eroi o Criminali? La rappresentazione della Mafia nel cinema e nella fiction* (June 2009) – contact authors for details of the papers presented.

focusing on the vocational rather than the social scientific (Rivaya 2006). The German scholarship is well developed, although paradoxically is perhaps less visible as 'German' on one level as a result of the tendency of German language scholars to make their contributions available in English (Machura and Ulbrich 2001; Drexler 2001; Böhnke 2001; Kuzina 2001, 2005; Machura 2005 – but see Machura 2006, 2007 for work in German). Publications in France have also featured where the focus has been both general (Puaux 2002) as well as on the judiciary (Guery 2007).

The relationship between early work on law and literature, and subsequent books and essays on law and film, is perhaps surprisingly limited and tangential. Both areas seem to have developed an extensive separate literature, and links between the two have only been encountered in a few essays that look at how books have ended up on screen. This focus on adaptation has not produced a thriving literature despite its mutual appeal to both literature and film/TV scholarship (Meyer 2001; Robson 2001; Bartlett 2002), and, hitherto, there has been a relative paucity of work on law and television. Film has dominated, certainly in the recent scholarship. The emphasis of scholars has differed as between those with a practical, social policy or theoretical focus. This ties in with the specific context in which the scholars have been working. A large number of those engaged in law and popular culture operate within law schools, and a major component of the work of these institutions is to provide vocationally orientated education to proto-lawyers in a range of different offerings. We ourselves have used observations on popular culture representations of law in teaching both of substantive law classes like property law, discrimination law, housing law and labour law as well as in theoretical modules like law and society, sociology of law and legal theory. Not surprisingly, much interest has been located on the question of the accuracy of the portrayals of the legal process. This is clearly of significance where film is being used to supplement and highlight issues of both procedural and substantive legal issues. This is expressed most clearly in the pioneering text of Bergman and Asimow where they specifically focus on the question of accuracy (Bergman and Asimow 1996, 2006). In addition, Richard Sherwin's groundbreaking work on the interpenetration of legal practice and the representation of practice has affected the way lawyers operate their businesses through, for instance, utilising visually appealing presentations before juries (Sherwin 2000; Sherwin et al. 2006).

The use of film in the scholarship varies. Particularly in the early stages, some writing was principally centred on offering a guide to the material in the field (Nevins 1996), whilst limited theoretically, studies of this type were very useful in terms of mapping the terrain and provided great benefit for subsequent scholarship, where more elaborate theoretical analyses have emerged. This has created some controversy. It is perhaps hardly surprising that there have been conflicts given the divergent approaches and backgrounds of the scholars and where the area has been in search of a guiding thread. One complaint, from some writers, has been the failure of other scholars to engage with the same concerns as themselves. Hence, for example, we find those interested in the ways in which different effects and techniques are

used in film to be disappointed that others focus on the narrative frameworks and on issues like adaptation theory. For our own part, one critic expressed regret that our book *Film and the Law* (Greenfield et al. 2001) did not cover television. Whilst we acknowledge the importance of television and have sought to develop scholarship in that area in its own right (Robson and Silbey, 2012), this charge was perhaps symptomatic of an individualised approach that privileges one's own areas of scholarship and 'hobby horses'.

Significant overarching themes which can be traced in the scholarship include the ways the law has operated in support of male-centred law (Kamir 2005; Lucia 2005). In addition, film has provided rich material for those working in the area of discrimination. Hence, anyone seeking to illustrate social policy themes has not only many films to draw on but a striking literature (Russell 1991, 1996). The broader question, too, of the nature of law and its relationship with those in whose service it is supposed to operate has attracted extensive attention (Spelman and Minow 1996; Ryan 1996).

Within law scholarship, television does not, of course, measure up to film in terms of academic kudos, and the academic output is, as noted above, relatively meagre. *LA Law* was the focus of early attention (Smith-Khan 1998; Gillers 1989; Friedman 1989; Rosen 1989; Rosenberg 1989), and two more populist overviews have been published (Jarvis and Joseph 1998; Asimow 2009). Some studies focussing upon crime do cover the two mediums in single studies (Brown 2003; Lenz 2003), but the different nature of the viewing experience and the distinct nature of the product would seem to militate against this kind of conjoined approach. It is interesting that in one of the books which purports to look at the representation of law in both cinema and television, there is, in fact, a strong emphasis on film. Lenz notes some 57 films in his bibliography of which 6 focus on the adjudication phase of the justice system (see more broadly here Greenfield et al. 2010). Only 7 TV drama series are mentioned of which 1.5 relate to this lawyer phase – *LA Law* and *Law and Order*. This emphasis is reflected in the text which, in fact, only looks at *Law and Order*.

There is, though, a further interesting paradox about legal scholarship within film and television. Much of the early work focused on television rather than film (Stark 1987; Rosen 1989), and commentators made little distinction between images in the different formats (Macaulay 1987; Friedman 1989). In the 1990s, however, the scholarship shifted almost completely to film. There have of course been a handful of significant exceptions such as those of Jarvis and Joseph (1998), Rapping (Rapping 2003) and Villez (2005/2010). Seven of the papers emanating from the 2003 Law and Popular Culture International Symposium in London (Freeman 2005) were on literature, fourteen on film and only three covered television. None of the television material was actually about TV lawyers (Robson 2007a). The early individual essays have been discussed elsewhere (Robson 2007a, 334–337, b), but it is worth reviewing, briefly, the sustained scholarship on law and TV here. Jarvis and Joseph (1998) provided an early examination of TV. It consisted of some 17 essays written by a combination of academic lawyers, historians and specialists in

the media. There are 11 essays on individual shows. These are arranged alphabetically and range over four decades.[2] There are also two essays on specialist subthemes – women lawyers and young lawyers. These provided the opportunity for a perspective on how these portrayals had altered over the years. In the longest essay in the collection, Corcos ranges over the years covering almost all types of shows and appearances by women lawyers. She even makes brief mention of the principal British women lawyers in *Rumpole of the Bailey*, Phyllida Trant and Rosie Probert.[3] The main thrust of her analysis back in the late 1990s, not surprisingly, was that women had enjoyed few roles in the vast array of legal dramas aired on US television (Corcos 1998, 223). Where they did feature, they were generally weak and containing some kind of character defect. Looking at the newly aired Ally McBeal, on the evidence of that first series, she judged that Ally's character confirmed 'the stereotypes of the professional woman as insecure in her work, desperate for male attention, overly concerned with her appearance and the impression she makes on others, and unable to put aside her emotional reaction to a situation in order to develop a rational response'(Corcos 248). Whilst the subsequent 6 series did not alter this trajectory, the relegation of the emotional to a defect is, it has to be said, controversial (Kamir 2000). The essay on young lawyers deals with the trope within legal dramas of the mentor-apprentice and how that was developed, particularly in *Storefront Lawyers* and *The Young Lawyers*. These aired in 1969 but have, according to Epstein's assessment, 'faded into obscurity' (Epstein 1998, 254). Finally, there are 4 essays describing the subgenres within which lawyers are portrayed – science fiction, situation comedies, soap operas and Westerns.

Interest in the field was stimulated with Elayne Rapping's polemic *Law and Justice: As Seen on TV* (2003), a vigorous and trenchant critique of what has occurred with both fictional and reality TV law issues. There is a limited focus on the development of the fictional TV lawyer. There are two big themes that Rapping develops. One is of particular interest, whilst the other has less resonance outwith the United States focusing as it does on court TV and the filming of actual trials. Rapping adopts a *zeitgeist* explanation to account for the political congruence between the drift to the right in American politics and the perceived shift away from a 'liberal' politics in the *Law and Order* series. Villez (2005, 37) suggests that there

[2] There was *Perry Mason* and *The Defenders* from the 1960s; *Paper Chase* and *Rumpole of the Bailey* from the 1970s; *Matlock, LA Law* and *Hill Street Blues* from the 1980s; *NYPD Blue, Murder One, Picket Fences* and *Law and Order* from the 1990s. Of these, three series are police procedurals in which lawyers make very limited appearances – *Hill Street Blues, NYPD Blue* and *Murder One*. The styles and subjects varied significantly from the social themes and issues found in *The Defenders* and *LA Law* to the simple triumph of good over evil in *Perry Mason* and *Matlock*. The pioneering work of individual essays on individual programmes was limited in its analysis of the changes over time of the programmes. Denvir, for instance, chooses to write about Rumpole in terms of how he measures up to the iconic figure of Atticus Finch.

[3] Regrettably, the unavailability on video of many early programmes means there is no assessment of the first woman lawyer as a major protagonist – Margaret Lockwood's Harriet Peterson in *Justice* in 1972.

has been a development from the individual case-focused dramas of the 1960s and 1970s with the 'Guardian Angel of the Law' style of lawyer. She indicated the next phase of the office-centred drama on the model of *LA Law* emerged in the 1980s where the focus is as much on the relationships between the lawyers and paralegals as much as the case (Villez 2005, 48). The final 'third generation of television lawyer' centres around the personal and professional lives of female lawyers encountered in *Ally McBeal* and *Judging Amy* – and one might now add Patty Hewes' *Damages*. This assessment, whilst it deserves further consideration in the American context, does not describe a universal development. It does not translate satisfactorily into a British context where whilst we had an early female lead protagonist, subsequent series have been male centred (Robson 2007a, 340) and neither does it reflect developments in the rest of the world (Robson 2009).

Most recently, there has been a contribution to the writing on fictional TV lawyers in the volume *Lawyers in your Living Room* (Asimow 2009). The style is lighthearted but the conclusions worthy of consideration. This collection of essays looks at individual shows for their significance in the wider world. The essays are wide ranging, including both well-known and more obscure examples, and divided into a number of categories. These essays provide a useful update of the Jarvis and Joseph approach. However, like Jarvis and Joseph, their aim is to provide a guide and overview rather than in-depth scholarly analysis. Asimow's collection was in fact published by the American Bar Association, who stated that 'The book is intended to be a trade book that would be sold primarily as a gift item. It should treat the subject in an entertaining but informative way. It is not intended to be a scholarly work'.[4] The purpose, then, of these essays was to introduce people to some familiar favourites and reintroduce them to other less well-known figures.

There is, then, no sound intellectual reason for the minor status of television lawyers. Insofar as law and popular culture concerns itself with the nature and impact of the image of justice, there would seem to be more reason for scholars with these interests to examine the ubiquitous television lawyer at least as much as the much less popular forms of films or books. There are, though, as we have noted, signs that there may be a fresh surge of work in this area. Having outlined the developments in the field, we turn to an analysis of the methodological approaches and challenges and in particular, to look at the impact and future direction of the area.

The focus of much of the early scholarship was unashamedly on legal education itself, although as we identify above, much recent attention has looked at establishing links with other disciplines, and as such, research has taken a theoretical turn. Such shifts necessarily need to be located in the context of the goals and aims of the scholars engaged in this work and the attendant shifts of emphases. These assumptions

[4] Asimow wrote in his brief to authors, 'I want rather short chapters that will run about 10 pages (15 tops) and are directed to the general public (not to academics). Thus they should be readable, non-theoretical, not footnoted, and preferably humorous. The organizing principle is that we're mainly talking about the character of the lawyers – personally and professionally – although anything else about the particular series is fine also'.

shape the work that has been carried out. They draw their inspiration from the early observations of scholars such as Tony Chase, Lawrence Friedman and Stewart Macaulay. Writing as early as 1986, Chase urged legal scholars, dissatisfied with both a narrow professional approach to legal education and the political agenda of critical legal studies, to turn their attention to cultural phenomena (Chase 1986). By the same token, Macaulay (1987) and Friedman (1989) both identified the possibilities of popular culture and the symbiotic relationship between popular consciousness and popular legal consciousness. In any event, these different strands have produced a bifurcated scholarship where we estimate about half of the work can best be described as strongly professionally orientated in its focus. Most of the rest of the work is more theoretical and literary in its style. The cultural products, whether the cinema of justice or TV series centring on or featuring lawyers, were perceived to be important and influential by their nature and volume. This underlying approach was perhaps best summed up in one of the earliest pieces of scholarship in this field by Steven Stark (1987, 231) when he set the context for his examination of TV cop and lawyers shows by stressing the importance of volume:

> …Americans receive ninety-five of their information about crime from the mass media.... researchers have shown that viewers take what they see on television to be the real thing.... seventy-three per cent of those children surveyed could not cite any differences between judge depicted on television shows and those in real life.

What is absent from the vast majority of the scholarship on film and TV justice is an explicit interest in exactly how one might assess the impact of popular culture on perceptions of law (Gies 2008). We now look at what has been done and the problems facing those seeking to explore this dimension of law's interface with popular culture.

46.3 The Impact Question: Empirical Work and Emerging Methodologies

In addition to the implications of scholars that impact was self-evident and did not require to be specifically demonstrated, there has been work that has emerged within the field of law and popular culture and outside this narrow area. The question of impact has been directly addressed in a limited number of pieces of empirical work on film, television and literature. This includes research by the authors, both published and unpublished on TV and fiction. The findings of this work are examined and assessed in terms of their significance.

We look first at work which has raised the issue of impact directly. In the empirical work carried out on what law students think about law and lawyers, television was the sole focus of one of the studies by Saltzmann and Dunwoody (2005) and featured alongside film in the other Asimow et al. (2005). One factor which might drive the focus on film is the perception that it has a greater impact on the consciousness of members of the public. The evidence of the extent to which that filmic law and justice portrayals impact on the perspectives of those involved as proto-lawyers

is mixed. Salzmann and Dunwoody found that students were not simply sponges who unquestioningly assumed that the lives and work of lawyers as shown on TV were an accurate portrayal of their likely lives as lawyers (Saltzmann and Dunwoody 2005). Looking at somewhat different factors, the Asimow study (Asimow et al. 2005) uncovered evidence of media impact. In this transnational study conducted in Argentina, Australia, England, Germany, Scotland and the United States, we looked at the sources of students' perspectives on various aspects of justice (Asimow et al. 2005). The students, to whom we administered questionnaires in relation to their views on the status of lawyers in the justice system, reported that the sources of their views were more strongly sourced in the media than in family, the education system or peers. We were very conscious in carrying out this research of the difficulties in seeking to compare students from very different backgrounds in different jurisdictions whilst carrying out the research. The thinking that led to this method was pragmatic. We were keen to establish some sort of basic benchmark, however crude, against which we could develop more detailed studies within and across the individual jurisdictions. At the same time, we were keen to avoid the tendency to focus on the United States and to a lesser extent Britain. We found that the more legally themed television and films that law students consumed, the higher their opinions of lawyers. Overall we concluded that the media, including TV and film, did indeed have an effect in terms of students forming their opinions about lawyers (Asimow et al. 2005, 429).

The same simple questionnaire methodology was adopted by ourselves in Britain to make a series of inquiries of first year law students as to their knowledge of the cinema of justice, TV lawyers and role models in film, TV and fiction. We also looked in a later study at the recollections of 1st year law students as to what were the names of the lawyers who had appeared on television in the recent past that they could recollect. The purpose of this was to assess whether or not the common-sense notion that seemed to underpin much discourse between scholars as to the major shifts in style between law shows was likely to have any significance for viewers. If some shows were seen as emblematic, one might expect these to be broadly remembered across a wide spectrum of the population as opposed to the most recently aired shows. In the series of surveys we conducted of all 1st year law students right at the start of their law course, there were a number of interesting findings. Firstly, there was limited recollection of any TV lawyers. Some 50% of students could recall no lawyer shows at all. Of those who did recall, there was a significant number who recalled a show which had ceased transmission some 10 years previously and also two other recent shows. There was almost no memory of 'lesser' shows amongst this group despite their having 'stars' in them and extensive promotion. Knowledge of American TV shows outweighed British series despite being approximately equal in terms of prominence on British TV in the past two decades. Subsequently, we asked students about the influence of TV/film lawyers, family member lawyers and local legal celebrities on their decisions to study law and become lawyers. TV/film lawyer figures figured more prominently than either local legal celebrities or family member lawyers (Robson, forthcoming). Cassandra Sharp, working within the ethnographic tradition stressing the context

and frame of reference participants, has also focused on the student experience of the educational process and how it socialises them into thinking like lawyers (Sharp 2002, 2004, 2005).

Moving away from students to television viewers, interviews have been used by Podlas in the United States to look at the impact of watching reality TV shows like Judge Judy on people's attitude to the justice system (Podlas 2005; Podlas 2006a) and on perceptions of judicial behaviour (Podlas 2006a). Frequent viewers reported themselves more likely to engage in litigation than nonviewers. More broadly, she noted that the media had an important role to play in terms of our understanding of the law and that popular culture presents our prime window on the law, as whilst few have stepped inside a courtroom, many will have experienced it via the lens of TV. 'Empirical evidence shows that most people learn about law from the media, and specifically, television. Ninety-eight percent of Americans have at least one television set, and watch at least 25 h of television programming per week' (Podlas 2005–2006, 444). Actual intake of knowledge of the law, though, does not appear to be as effective as earlier writers assumed with knowledge scores of heavy legal show viewers in tests no higher than viewers who did not watch such shows (Podlas 2006b, 50). Superficial changes such as modes of address in court are recorded, however (Villez 2005, 275).

A common perception in practice, though, assumes a media impact. Papke, writing in 2007, gave an interesting example of a US judge who, concerned that works of popular culture might influence and affect those in her courtroom, took steps to try and remove this influence but then saw an Internet posting from a prospective juror noting that he was doing his preparation for his civic duty by watching a series of judge-focussed law films such as *12 Angry Men* and *Trial by Jury*:

> Do the commodities and experiences produced by the culture industry have an impact on their audiences? Commentators have long assumed that the answer to that question is yes. At the end of the nineteenth century moralistic reformers including…Anthony Comstock worried that popular adventure stories and romance novels were corrupting readers, especially young ones. (Papke 2007, 5)

This ties into other work that has attempted to look at media impact upon jurors for example (Greene 1990; Cole and Dioso-Villa 2006–2007). It is, however, difficult to gauge the impact, or the effect of any specific work of culture. There are in addition key legal questions concerning apportioning blame and establishing liability, beyond the purview of this specific piece, but which has been the subject of significant debate particularly around films such as *Natural Born Killers* and music such as *Judas Priest* and the difficulties of ascribing legal liability (Franklyn 2000; Linneman 2000; Wood and Hirokawa 2000). In terms of trying to get some idea of impact and effect, cultivation theory has been one way of dealing with this. This is the notion that consumers of popular culture view social reality differently, as the consumer's conception of reality will be affected by a prolonged and significant viewing. This applies primarily to television although this could equally apply to material on the Internet. The notion of genre is particularly important within this context as repeated ideas, notions and conventions at the heart of a genre may help inculcate specific norms. A genre-specific cultivation

effect within law has been noted particularly with the role and function of the judge (Podlas 2005; Podlas 2006a).

The next stage of this argument is that somehow these depictions might have some direct impact upon how people act when engaging with the justice system in real life. A number of the studies on this have focussed upon the so-called CSI effect (Podlas 2006/7; 2006b; Cole and Dioso-Villa 2006–2007, 2009). At its most basic formulation, real-life jurors are alleged to now expect the same approach and sophisticated take on evidence as they have seen in the CSI programmes, as the programmes have created such expectations. Podlas, whilst introducing a more nuanced appreciation of different levels of the CSI effect, including potential positive benefits, notes that there is anecdotal support for an argument of audience (over)expectation but that there is little in the way of empirical evidence to back it up; 'Although the media warns that a CSI Effect is seducing jurors into legally-unjustifiable "not guilty" verdicts and unwarranted demands for proof of guilt beyond any and all doubt, the empirical results here suggest otherwise' (Podlas 2005–2006, 429). There has also been interesting work which seeks to explore the different assumptions about how people make judgments in courts and the impact of television on these decisions. Podlas (2008) has also looked at how television versions of 'cross-examination' impact on how jurors assess the 'truth'. She notes that audiences familiar with the 'scripts' from fiction are more ready to accept the real-life versions of these 'scripts' when lawyers seek to couch their arguments using these narrative devices.

Papke brings us back to the broad context within which much work was carried out. Looking specifically at the courts, he notes how depictions of the courtroom have an important place in the psyche of Americans, but that many people inside the system have a problem with such popular culture portrayals, and indeed do not enjoy their exaggeration or over-dramatisation (Papke 2007). Thus, whilst noting that it is difficult to evaluate impact, and also to isolate 'cause' within the cause and effect rubric, goes on to consider whether we should limit the potential impact of popular culture. He couches his response largely in terms of responsibility and public education, focussing on the impact in 'the courthouse, the community, and in the den and family room' (Papke 2007, 18). He sees the potential impact on the *voir dire* and jury selection and conduct as in need of some protection against popular culture impact. On the wider level, he sees the need for a more systematic approach to teaching what goes on in the courtroom, going as far as suggesting that public education should be a formal duty of members of the bench and related officials, and on the individual level, he asks for more of the audience and our role as scholars:

> Educators should teach us how to challenge our popular culture, and we should take these lessons to heart. When we are watching a television show or a DVD in our dens and family rooms, we should intellectually wrestle with what we are watching. Popular culture can actually be more entertaining and edifying if we critically examine it. (Papke 2007, 19)

The operative assumptions, then, underlying much of the scholarship on both the professional and the theoretical/literary studies share a common starting point of the assumed significance of popular culture for society. In discussing the significance of

the existing limited empirical work, the question of methodology naturally emerges. A fundamental issue which connects this specialist area of academic endeavour with the sociology of law is the rather broader issue of the public legal consciousness. The whole question of identifying the public attitude and understanding of legal phenomena has a rich history. The developments have been different in different jurisdictions, and this perspective is based principally on what occurred in Anglo-American systems. An interest in levels of knowledge and understanding of the law formed a central part of the early scholarship of sociolegal studies in the 1970s (Podgorecki 1973). The early work was based on national surveys. These looked at a range of issues across Europe. These included material on the connection between the content of the law and people's perception of justice. Moving from local and national perceptions of specific laws and institutions is what is central here. Wrestling with the elusive concept of popular legal consciousness in a precise rather than very broad way continues to be a major preoccupation of the social-legal community, and we hope our work may contribute to this debate (Ewick and Silbey 1998).[5]

46.4 New and Competing Methodologies

The methods deployed in extant studies have been relatively straightforward. They have been based on a range of different surveys. The issue of how researchers can devise a satisfactory and appropriate methodology in relation to assessing public perceptions continues to provide problems. Scholars are seeking to assess the impact of popular culture on as broad a section of the public as possible. Hence, the questions of the nature and size of samples are crucial. Thus, far in the field of law and popular culture, reliance has been placed on very small-scale work with 'captive' student audiences or on the findings of much broader pieces of empirical work commissioned to find out public opinion on such general topics as confidence in the police, capital punishment or sentencing policy (Asimow et al. 2005). The nearest we get to detailed information which centres on images of justice and the operation of the legal system are polls on the general reputation of lawyers. In addition, though, to there being a reliable sample from which to extrapolate, there is this issue of population segmentation. Our work suggests to us shifts in perceptions between and within different year groups of students over a 5-year period. Hence, from this it seems to us vital to explore whether there is a difference between how justice issues are perceived as between young and old, rich and poor as well as between ethnic groups. Gender too might be expected to play a crucial role. Hence, the need and desire to explore the perspectives of groups differentiated in these ways.

[5] In 2009, Susan Silbey announced a major transnational project to take forward the disparate and disconnected national work on precisely this theme – Research Committee on Sociology of Law Meeting, July 2009, Oñati, Spain.

Whilst familiar territory to the social scientist, some of these issues have not figured heavily in the background of legal or cultural studies where most of the scholarship on law and popular has developed. That has been, however, by no means an insurmountable obstacle. With sound advice, it has been possible to develop studies which allow conclusions to be drawn – albeit relatively modest ones (Asimow et al. 2005; Salzmann & Dunwoody 2005). With cultural products, however, even allowing for differentiation between different populations, the issue of changed perceptions of time of the same phenomena is an important issue. In simple terms, we have the issue of not only how different age groups might view vigilante movies and the issue of self-administered justice but how the films are viewed over time. Firstly, the films and the issues within them subtly alter. Sherwin (1996) suggested that we can identify major shifts in the national mood by examining films on similar topics over time. Asimow goes along with this approach in relation to how lawyers have generally been portrayed (Asimow 2000). In another area of the portrayal of justice, we find interesting shifts over time within the subgenre of the vigilante film where the broad theme of the distressed individual avenging the failures of the justice system to bring a personal justice to bear on wrongdoers has subtly shifted over the years. From being a simple unadorned message of justified revenge, the most recent examples of the vigilante have cast doubt on the effectiveness of this simple revenge narrative. The simple certainties of Paul Kersey have been replaced by a nuanced ambivalence and downright rejection of vigilantism with Nick Hume and Walt Kowalski (Robson 2010).

Our initial hypothesis, based on our work with first year law students, was that each year group drew on a different pool of film and television version of images of justice. Looking at the British television lawyer series, students had a limited familiarity with presentations of justice which were outwith their viewing spectrum. There was, in reality, no 'folk memory' of Horace Rumpole or Perry Mason. Cultural reference points like Atticus Finch simply did not exist. These initial findings led us to think that this kind of generational segmentation had serious implications for our desire to pin down public legal consciousness in relation to the impact of popular culture. In addition to this issue, there is how a film's meaning(s) is viewed in different time frames and periods. Since the arrival of television in the 1950s, and the development of new technologies and specific dedicated film channels, there has been the possibility of viewing and reviewing cultural products. Many films and some television series now have an almost endless life. In essence, this changes the way films and television can be experienced and our relationship to them and has implications for any work seeking to assess impact on legal consciousness. New generations now have the opportunity to evaluate figures, such as Ben Matlock when they appear on DVD (Greenfield et al. 2009). When law and popular culture emerged as a focus for study in the 1980s, this would have been impossible. What would have been difficult to access is often now available, and the potential for a richer picture emerges. This does, however, raise problematic questions. Hitherto, 'captive' student audiences have been the preferred option for reasons of cost and feasibility. Whilst interesting, these offer a distinctly limited picture of 'public' perceptions. The rather broader issue of data reliability and the

extent to which surveys provide a useful source is one of the central issues within social science.

This chapter recognises that the problems in the area of assessing the impact of culture are considerable. Some banal practical problems are also worth pointing up. The reasons for this relative neglect by scholars of the images of law and justice on television and the possible reasons for this are discussed in greater depth elsewhere (Robson 2007a, b). Briefly, this is attributed, in the past, at least to the practical problems involved in assembling the material. As has been noted above, and elsewhere, scholars have frequently worked on individual films. These have become more easily accessible through video and DVD. TV programmes have, however, become more available in the DVD era, and there is now a greater possibility of accessing recently shown series. Much valuable TV material has, however, been permanently wiped. Availability is, therefore, patchy. On the other hand, it is now possible to obtain examples of a number of jurisdictions outwith the Anglo-American.[6]

As far as British and American series are concerned, there has been, up to the present, limited easy access to material. Only 3 of the pre 2000 British fictional shows appeared in video/DVD format although such release now appears to be standard even when the series in not recommissioned.[7] Tapes of the vast majority of the programmes from 1958 to the present, however, have been wiped or are only available at considerable cost. The same appears to be the case in the United States. At the time of writing, there appears to be no availability of such path-breaking programmes as *The Defenders, LA Law* or *Petrocelli*. Although these are not insuperable obstacles (Robson 2007a), they reinforce the unarticulated hierarchy in cultural products in which television comes well below literature and film. There is also the question of volume. The sheer quantity of material, even in the most modest series, is perhaps trivial seeming but is a serious barrier to research. Typically, even a modest run of a series involves a dozen 1-h episodes. The attractions of looking at a single 90/120 min film as opposed to at least 12 and up to 40 h of television programming are obvious for all but the dedicated Stakhanovite. Anyone wishing to undertake a serious study of any series requires to do more than watch a couple of sample episodes, however tempting that option may be.

In addition, there are the issues emerging from the context of law and popular culture scholarship. This has produced a scholarship with an interest in both professional and literary meaning. The changes, identified in the scholarship, have been at the broad level of the *zeitgeist* and generational and epochal significance. The need is to provide a rather richer and more specific picture of culture's impact. This must be done bearing in mind that what can be drawn from extant studies is limited.

[6] See, for example, in France – *Avocats et Associés*; Spain – *Anillos de Oro*, *Turno de Oficio* and *Al Filo de la Ley*; South Korea – *The Lawyers*; Japan – *Common Lawyer; and* Australia – *The Circuit.*

[7] *Rumpole*, *Kavanagh QC* and most recently *Sutherland's Law* from the 1970s. By contrast, 5 of the post 2000 shows have gone to DVD – *Judge John Deed*, *Outlaws*, *The Brief*, *New Street Law* and *Kingdom*. The pioneering series *Law and Order* (1978) (no relation in any way to the American series) is also now available. This looked at a single investigation into a crime from four perspectives – a corrupt police officer, a career criminal, a prisoner and a 'shady' lawyer.

Whilst the reasons for these limitations have been acknowledged, the difficulties facing researchers in this area are recognised and laid out in this chapter. The prospects of funding for extensive studies which satisfactorily address the methodological issues identified are one practical issue beyond the scope of this piece. We would want to conclude by suggesting that to continue with scholarship in the dominant cultural and literary modes of the recent past limits, the potential for law and popular culture to make a major contribution to our understanding of the interaction of these phenomena and that further extensive empirical work is vital for the health of the film and television scholarship in this field.

This expansion into a more nuanced understanding of the impact of cultural products on specific segments of the market over time can most profitably be combined with another of our research strategies. This has started to look at how it is that the films and television programmes emerge in the form and with the stylistic and narrative conventions that abound in the cinema of justice and small screen justice. We are currently engaged in researching the process of commissioning of films and television programmes and what limits and constraints producers of popular culture on justice operate under. By combining these two explorations into the production and consumption of culture, we feel this gives an opportunity to provide more than our own particular interpretations of the meanings of film and TV, which whilst of some interest, might be seen as no more valid than those of any other commentators. As Rosen (1990, 517) noted, when discussing the links between psychology and law, and the possibilities of legal research that examines the use of law for the media and media for the law:

> …the legal process incorporates, shapes, and transforms cultural behaviors and attitudes. That there is a complex dependency between law and culture is not just a consequence of citizens bringing to the law their cultural baggage and the law seeking a legitimacy that speaks to citizens. Social justice (or at least a morally rich pluralism) depends not only on the autonomy of law but also on the interdependencies of law and culture. Interdependence is normatively required, at least in part, because not only must the law morally matter to a culturally heterogeneous population, but also the law ought to be able to speak to those whose claims it does not currently recognize.

Engaging beyond the narrow confines of the legal paradigm is what law and popular culture has always sought to do. It is now more important than ever that in seeking to get a better purchase on the relationship between these phenomena that we pay serious attention to developing methodologies that encompass both structural and attitudinal factors.

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