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The Consumption of Legal Language: Consuming the Law

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There has been a slippage away from understanding criminal law as the domain of specialists towards a popular folk understanding of law: largely this is the outcome of the increased consumption of media. Recently academics across a range of disciplines have begun to look critically at the interplay of law and consumed media by examining legal speech and performance in a post-modern setting. This has led to an analysis of the processes involved in the way that media represents law and how this has led, in turn, to a shift away from understanding law as the domain of specialists towards an analysis of the popular understanding of the common law and legal procedure. Legal language is routinely consumed and represented to non-specialists. In the modern world there is a definite fusion of law and culture at the level of popular discourse and we find the real, and the represented, are mingled on television, radio, and film as well as in the print media and the Internet. Our notions of participation and spectatorship are also similarly confused. However, we should not be surprised at this. It is the inevitable corollary of media production and the seemingly insatiable demand for stories about law, especially criminal law, emanating from the news-consuming public; and which they act on.

We should bear in mind Lawrence Friedman's maxim that it is not law itself, but representations of it, which affect behaviour. People tend to proceed in terms of what they think the law is, rather than what it actually is.[1] Though it is important to bear in mind the point made recently by Shuy in relation to civil litigation: 'we usually don't think about our native language as we converse in it. For most adult conversation is relatively automatic and unconscious.'[2] In other words, people are not conscious of the how they are using language or, importantly, where that language came from. Persons often come to believe they understand the law, though in reality their understanding is non-technical, and largely derived from television, the cinema, newspapers and, increasingly, latterly the Internet. They consume something that they understand as knowledge of the law, though it is gained in an ad hoc, unsystematic, and partial fashion. They hold to a folk understanding of what law is. The public discuss cases and speculate about their outcomes and about the state of the law generally. The interplay of law and performance in our digitalized multimedia world has led to major changes to our treatment of legal

cases.[3] The lives of popular celebrities highlight legal matters, in terms of specific cases, and the outcomes of these and speculation about them show that the public have a seemingly inexhaustible hunger for details of cases, for example those of Michael Barrymore, Winona Ryder, O. J. Simpson, and Anna Nicole Smith. Of course, the supply of legal information in all forms of media, notably the Internet, also feeds that public demand. There is a plethora of legal and legal-related drama on our television and here people do perceive that these have an educational function irrespective of whether they actually do. These drama series tend to be well scripted and realistically shot and aim to immerse the audience in the plot. There has been talk of this 'screening of law' through popular culture as having definite ideological aspects.[4]

We can detect a merging of popular culture and law, especially in jurisdictions which screen court cases. The discussion of legal cases in our daily lives has had an impact upon the popular perception and understanding of legal principles and ethics.[5] Law and the popular understanding of it through our increased use of media are now fused, and confused. There has been an unprecedented change in the portrayal of law and lawyers in the media and, along with it, an attendant rise in the public's confidence that it is aware of legal statute, procedure, and precedent, as Sherwin has convincingly argued.[6]

It cannot be sustained that the general public, jurors, and witnesses come to the law *tabula rasa*: rather, it is the case that they come to the law after a lifetime of immersion in the law through an assortment of media portrayals, be they real or fictional. Moreover, all of this may be of only of some minor sociological interest but for the fact that the media rely not on legal canon and procedure but on an over-simplified explanation of cases that often claims to be educative, but which in reality only flags up issues and generalities; and in doing so does not necessarily illuminate legal principle or procedure. Lucia Zedner has argued:

Newspapers, radio and television carry reports of sentences, of judges' comments upon passing sentence, of their implications, and of reactions to and criticisms of them. Media commentary amplifies (and in amplifying may also distort) the message of the sentence, maximising its impact and inviting public debate that amplifies it further still.[7]

The notion of moral panic being fostered through media attention to issues such as mugging, mobile phone theft, and graffiti is something that academics, policymakers, and practitioners are all too aware of.[8] In academic criminology Colin Sumner long ago argued that:

Social censures, as negative ideological formations, are thus highly targeted, despite the universality or indeterminateness of their form of language, especially legal language. Moral language is formed and developed in social practice; its expression of unified ideological formations in censures is enabled, primarily by that unity, which itself forged in the targeting process.[9]

[1] L. Friedman, 'Popular Legal Culture: Law, Lawyers and Popular Culture' (1989) 98 *Yale Law Journal* 1579–1606.

[2] R. W. Shuy, *Fighting Over Words: Language and Civil Law Cases* (Oxford: Oxford University Press, 2008), 3.

[3] P. Robson, 'Lawyers and the Legal System on TV: the British Experience' (2006) 2(4) *International Journal of Law in Context* 333–62.

[4] N. Mezey and M. Niles, 'Screening the Law: Ideology and Law in American Popular Culture' (2005) 28 *Columbia Journal of Law and the Arts* 92–186.

[5] S. Williams, 'Moral Pluck: Legal Ethics in Popular Culture' (2001) 2 *Columbia Law Review* 421–48.

[6] R. Sherwin, *When Law Goes Pop: the Vanishing Line between Law and Popular Culture* (Chicago: University of Chicago Press, 2000).

[7] L. Zedner, *Criminal Justice* (Oxford: Oxford University Press, 2004), 172.

[8] S. Cohen, *Folk Devils and Moral Panics* (Oxford: Routledge, 1980).

[9] C. Sumner, *Censure, Politics and Criminal Justice* (Milton Keynes: Open University Press, 1990), 30–1.

1. Revisiting Sumner and ideology

Colin Sumner examined the use of language and how it impacts on the treatment of crime and criminal law in relation to censure. Sumner's ideological use of the term censure asserts the role of social structure, history, and ideology, as opposed to the normative value, of the censure.[10] In the ideological version the censure itself is problematic for it is necessarily the result, to a greater or lesser extent, of ideological determination. The censure tells us more about the power relations that give rise to its application than about its necessity in any jurisprudentially determined model. Moreover, he relates this process to traditional issues in Marxist scholarship, those of power and the state. Sumner's work on the concept of censure culminated in 1990 with the influential collection of essays *Censure, Politics and Criminal Justice* which conceived of criminal law, not in terms of a sociology of deviance or a legal canon, but in terms of the enforcement of dominant social censures by understanding the criminal justice system as being ideologically and politically constructed by dominant capitalist forces. Not only did it seek to critique the enterprise of criminal law by developing a rigorous theory of censures by drawing upon both historical and sociological research but its intention was to change the entire thrust of criminological and legal research, which it saw as inadequate.[11] As Sumner rather pithily stated:

Whether we take their abstract, discursive definitions or their practical definitions in the course of law enforcement or moral stigmatization, it is clear that the definitions of deviant behaviour, even within a single society, exclude what should be included, include what should be excluded, and generally fail to attain unambiguous, consistent and settled social meanings. To this we add massive cross-cultural differences in the meaning, enforcement and even existence of categories of deviance, and endless instances of resistance to them involving alternative categories.

Clearly, they are highly acculturated terms of moral and political judgement.[12]

In other words since there is no possibility of using the normal categories of crime and deviance in a scientific, or even consistent, fashion it is right to analyse them as moral and political discourses. Crime categories should be understood as negatively conceived ideological categories. This approach views crime categories in terms of their institutional forms and practices, that is, how and why they arise in certain places, at certain times, in relation to certain groups and how these are expressed through language.

In Marxist terms crime categories should also be understood in terms of the hegemonic function they have in signifying, denouncing, and regulating individuals and groups. Policing, the court system and other functions of the criminal justice system, Sumner argued, reflect capitalist social, economic, and political relations. The criminal justice system is in place to uphold the interests of the capitalist class. Accordingly, censures may be said not to reflect a *truth* about the extent of crime but rather 'a world-view which had not come to terms with its repressed unconscious—the fear of women, blacks, radicals, the working class and the colonized.'[13]

Following Marxist theory on class, Sumner argued that in any society dominant groups, i.e. in terms of class, gender and race, will inevitably seek to maintain their

control through the 'capacity to assert its censures in the legal and moral discourses of the day'.[14] He argued that this involves not only the courts and police authorities but also the mass media and that it is primarily achieved through legal language. A process is set in motion which supports the discourses and practices of the state against any dissenting voices. Censures are more than labels and should be seen as 'categories of denunciation or abuse lodged within very complex, historically loaded practical conflicts and moral debates'.[15]

Sumner's theory of social censures is reliant upon earlier criminological and sociological work relating to ideology and cultural studies, notably *Policing the Crisis*, which suggested that the censure of black mugging which was expressed in the press and media and supported by the police, at the time, had no real evidential basis; but instead was the result of the political situation, then existing, and the police's focus upon blacks in the inner cities. Hall et al. suggested that the censure of blacks was, at root, an ideological phenomenon rather than a criminal justice problem per se.[16] Hall et al., like Sumner, saw the black mugger as a scapegoat for wider social and economic failures. The attention that black mugging received was no more than a deflection away from a crisis in hegemony. Sumner was concerned that scholars had both taken deviance and law-breaking to be a largely unproblematic term and overlooked the lack of consensus surrounding it. In fact, Sumner argued that deviance was being read off as a *deviation* from a dominant moral code; in other words deviance was merely a deviation from a social convention. Sumner argued that concepts of crime, deviance, and difference not only were conflated but were radically subjective terms rather than scientific categories and not up to the task of critical analysis.[17]

For Sumner, the sociology of deviance was progressive in that it focused attention away from issues of degeneracy and towards concerns around social regulation. He argued that: 'crime and deviance cannot be disentangled from the social facts of collective life' and that criminologists ought to realize the sheer complexity of the social world before venturing further in theoretical terms.[18] He suggests that 'social censures combine with forms of power and economy to provide distinct and important features of practices of domination and regulation'.[19] Sumner gives us reasons to question the censures we commonly use and to ask questions about their origin and purpose. He points us away from the immediate issues surrounding crime and towards a contextualized analysis of crime and criminalization which focused upon the role of censures; as with the analysis of Hall et al., Sumner sees censures being generated through the media in a fashion which combines with news coverage to dramatically focus moments of crisis, usually political, into a call for a more authoritarian state.

It is important to underscore the fact that most media stories about crime tend to be of a traditional cops and robbers type and the white collar criminal is largely ignored. Crime is most usually portrayed as a problem associated with the working classes and it is, moreover, usually an urban phenomenon. Following Sumner, we might ask why white collar crime is largely underrepresented in the media. The views that most people have about crime, about law and order, and about the processes of our criminal justice

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[10] A. Amatrudo, *Criminology and Political Theory* (London and Los Angeles: Sage Publications, 2009).

[11] Sumner, *Censure, Politics and Criminal Justice* (cited in n.9), 23–6.

[12] Sumner, *Censure, Politics and Criminal Justice* (cited in n.9), 26.

[13] C. Sumner, *The Sociology of Deviance: an Obituary* (Buckingham: Open University Press, 1994), 310.

[14] Sumner, *Censure, Politics and Criminal Justice* (cited in n.9), 27.

[15] Sumner, *Censure, Politics and Criminal Justice* (cited in n.9), 28.

[16] S. Hall, C. Critcher, T. Jefferson, J. Clarke, and B. Roberts, *Policing the Crisis* (London: Palgrave Macmillan, 1978).

[17] Sumner, *The Sociology of Deviance: an Obituary* (cited in n.13), 309–12.

[18] C. Sumner, 'The Social Nature of Crime and Deviance' in *The Blackwell Companion to Criminology* (Oxford: Blackwell, 2004), 29.

[19] Sumner, *Censure, Politics and Criminal Justice* (cited in n.9), 35.

system are garnered piecemeal through consuming various media, over time. The result of all that, of course, is that the censures we generally employ are not criticized, nor are the social conditions that gave rise to them.

In revisiting Sumner we can see how the entire language game itself is socially and politically conditioned, and contextualized, and that our language is, to some extent, always and *necessarily* polluted. As Sumner has argued: 'Now if criming cases is a very active, creative, process involving some social and legal skill, and much awareness of what magistrates and judges will accept, then presumably the fact that cases are crimed in a highly patterned and predictable way, leaving the world's prisons full of poor people, is hardly an accident.'[20]

2. Basil Bernstein: language and socialization

It will be useful for our later discussion to revisit Basil Bernstein's classic 1970 essay on cultural transmission, *Social Class, Language and Socialisation*, since it makes a number of points that bear upon the nature of the way people come to understand their world, and do so through language, which usefully bears upon media representations of the law, in its many guises. Bernstein looked back to Durkheim in terms of his analysis of the relationship between the classification and frames of symbolic order and the structuring of experience in seeing how that can lead to the 'pathological structuring of experience', i.e. a disjunction between the real and the represented.

Bernstein further tells us that the more commonality there is between persons the more likely that their language will take a specific form; in other words, that a narrower set of social relations narrows the likely range of meanings, since language is enacted against a backdrop of common assumptions, common history, common interests and that 'the unspoken assumptions underlying the relationship are not available to those outside the relationship'.[21] Bernstein here echoes Durkheim's distinction between mechanical and organic solidarity, as set out in *The Division of Labour in Society*. This is useful if one conceives of the media in these terms and re-conceives the issue of what we might call the *boundary maintenance* of the value system. The media is typically our major source of information and we can all understand its power to broaden horizons, but also its ability to narrow, or constrain, our values through its output and production values. In short, we can re-apply Bernstein's notions of boundary maintenance and substitute legitimating authority for class. In doing this we see the media as one of Bernstein's socializing agencies; and as he argued in terms of education: 'For the schools are predicated upon elaborated code and its system of social relationships. Although an elaborated code does not entail any specific value system, the value system of the middle class penetrates the texture of the very learning context itself.'[22] So as pupils imbibe the values of their school, so do viewers, readers, and listeners imbibe the values of whatever media production they are currently consuming.

3. Victims

The issue of value consumption through the media is well illustrated in the recent work of Rentschler which has shown the ways in which victims are portrayed in the news media as 'a class of citizens without rights' and who are, in turn, defended by a new class

of victim's rights *champions*.[23] She relates how a victim's rights discourse has come to pervade media production and contemporary journalistic practice and the public's current understanding of the law in an unbalanced and very unhelpful way through the creation of *narratives* of legal processes, rather than elucidating any established legal principle, e.g. in relation to such issues as the proper attribution of culpability and guilt and the systematic playing down of defendants' rights in terms of judicial safeguards for accused persons in criminal cases. She argues that contemporary journalistic practice encourages 'the news industry to further invest in the coverage of crime by framing crime news as a form of narrative therapy for some victim's families'.[24] Moreover, she shows how the way in which a media rights lobby propels:

victim's rights *to* and *in* the media signifies that it seeks access to and participation in media-making on crime as part of the process of re-assessing a definition of crime as interpersonal battle between offenders and their vicarious victims, the families of killed victims. In this scenario, victim's rights advocates and journalists both function as reporters of socially constructed knowledge and editors of the documentary realities of crime from the perspective of victim's rights.

While law enforcement and the court system have long been the preferred sources for crime news and other non-fiction media programming the victim's rights movement encourages reporters, and victim advocates, to direct victims' rights discourse into the news media. They teach journalists to direct victim's rights discourse into the news media. They teach journalists how to identify with the grief, anguish, and other painful feelings expressed by crime-victim families in order to give the typical law-and-order character of news a therapeutic sheen through a re-orientation of the news interview context itself. They teach advocates how to translate victim's rights into strategic calls for victim-oriented news. And they teach us that calls for a more therapeutic and hospitable news environment for news victims can mean many things, one of which signifies the links between the news media's need for crime news and the political struggles for victim's rights.[25]

I think we see all too clearly here how a diet of victim-oriented news discourse can, over time, shape the *Weltanschauung* of persons away from the rational and usher in an over-retributive focus in the general population in its wake.[26]

4. Television

Harris set out the issue of what the public *learn* from the media about the law but, more importantly, he focused academic attention upon those elements which were genuinely misleading.[27] The most important of these was the erroneous promotion of a world more violent than it actually is; promoting a belief that criminals get away with the bulk of their crimes; giving a misleadingly high standard for police clear-up rates; misrepresenting the racial profile of known victims and failing to show the complexity of legal procedure, especially in relation to the organization of court cases.

American television has had a huge influence upon the popular understanding of law and lawyers and its format and style has usually preceded development in the UK, and globally. First aired in 1957, the definitive portrayal of a lawyer on television is

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[20] Sumner, *The Sociology of Deviance: an Obituary* (cited in n.13), 219.

[21] B. Bernstein, *Class, Codes and Control* (London: Routledge & Kegan Paul, 1970), 137.

[22] Bernstein, *Class, Codes and Control* (cited in n.21), 186.

[23] C. Rentschler, 'Victims' Rights and the Struggle over Crime in the Media' (2007) 31 *Canadian Journal of Communication* 219.

[24] Rentschler, 'Victims' Rights and the Struggle over Crime in the Media' (cited in n.23), 219.

[25] Rentschler, 'Victims' Rights and the Struggle over Crime in the Media' (cited in n.23), 235–6.

[26] M. Dubber, *Victims in the War on Crime: the Use and Abuse of Victim's Rights* (New York: New York University Press, 2002).

[27] D. Harris, 'The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System' (1993) 35 *Arizona Law Review* 785–837.

Perry Mason. The lead character was the virtuous in every way, kind-hearted, intelligent, urbane, and moral.[28] He would see above the humble lives of his clients in a never-ending search for truth. His cross-examination skills were impeccable, and Mason would get witnesses to break down and confess. Macaulay relates:

> Mason doesn't get his client acquitted by showing the prosecutor failed to carry the burden of proof. Instead, he proves his client's innocence by exposing the real killer. Surprise witnesses appear at the last minute, just before it is too late. After Mason's cross-examination, prosecution witnesses break down on the stand. As far as we can tell, Mason has never represented a guilty client or engaged in plea bargaining.[29]

In short, *Perry Mason* was the personification of all that was good about (American) legal practice; indeed in justice itself.[30]

A little later *The Fugitive* showed another side to the legal process. The plot involved a doctor, Richard Kimble, who was falsely accused of the murder of his wife. Kimble had escaped execution and become an outlaw intent on clearing his good name. It was a radical take on the law which seemed to rest on two premises, (1) that the innocent will finally prevail and (2) that the legal system needs to be guided by engaged citizens. The programme sought to actively involve viewers in Kimble's quest for justice.

Latterly, law and lawyers were, perhaps, most successfully captured in recent times with the series *L.A. Law*, which was first aired in 1986. *L.A. Law* was novel in that it was set in a leading law firm amid the affluence of 1980s America. The lawyers were all graduates of leading American Ivy League Law Schools—they wore expensive clothes, drove expensive cars, and lived in expensive houses. Their affluence was the result of their superior education, hard work, and ability, though they possessed personal character flaws too.[31] It also tended to make the work of lawyers seem more interesting than it often is by neglecting to show the more mundane aspects of legal preparation, e.g. trawling through case files and statutes, drafting letters, and so on.[32] *L.A Law* did claim to be concerned with the ethical life of lawyers and the ability of lawyers to sustain a moral professional life in the face of a legal system which was, in part, corrupted by rich and powerful individuals and corporations.[33] *L.A. Law*, even though a popular drama, did raise many real-world concerns about the ethical status of lawyers and the neutrality of the law. It is worthwhile looking at Gillers' analysis since he makes three cogent points from the perspective of a professor of law and practising attorney. Gillers' first point is that the role of lawyers is over-emphasized in *L.A. Law* in that it 'inaccurately represents the kinds of legal issues lawyers routinely address, especially lawyers in private practice'.[34] He argues that this represents a gross disjunction between how the public understand law and the legal profession and how practitioners think about their profession and about law itself. In making *L.A. Law* a successful television show, actual legal considerations will always be secondary in the production process to those of entertainment. Moreover, it is absurd to maintain that an hour of television could ever deal properly

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with the ambiguity and complexity of issues concerned. Gillers' second point is that *L.A. Law* does not accurately recognize or describe the ethical issues which lawyers typically face. Here Gillers acquits *L.A. Law* a little better but argues that: 'As with legal issues, the immediate ethical problems are answered because they must be, but the larger conflicts they signify are unresolved.'[35] In other words the oversimplification demanded by television is itself a distorting factor: moreover, the audience has no legal training and so largely sees the programme in terms of drama, rather than legal principle and procedure. Thirdly, Gillers points out how the work of lawyers is exaggerated and conceals the bulk of their preparation work. He shows how *L.A. Law* merely uses the law plot to tell a story, not to illuminate legal principle and procedure. He states that '*L.A. Law* makes the lawyer-storyteller, a character.'[36]

The points Gillers makes, though focused on *L.A. Law*, are applicable to the law firm genre in contemporary television in general. These reservations about the efficacy of the law became the focus of *The Practice*, which often showed its protagonists losing in court, corrupt lawyers, and a legal system in which justice does not always prevail. *The Practice* was, though, usually characterized by its characters' love of the highest ideals of the legal profession. As Mezey and Niles have argued, 'our discomfort with the existence of the morally ambiguous criminal defence attorney was assuaged by her important role in the criminal justice system, which...for all its imperfections, is mostly effective, just, and superior to the imaginable alternatives'.[37] All the lawyers in *The Practice* were streetwise and aware that deals had to be made in their professional lives; but there were definite limits to such ethical gymnastics; after all the show was made by corporate America, as Kitei has detailed.[38]

What is certain about contemporary American television portrayals of law and lawyers is that they invariably still hold to some attenuated version of *Perry Mason*; to a belief in the goodness of justice and the righteousness of a good case. Money, class, race, gender are not an obstacle to the good case winning through. American television supplies a constant stream of characters motivated by a dogged faith in the legal process. The concession to the modern world lies in its characters being more nuanced than those of yesteryear, and in the fact that the issues with which they deal are more complex too. Macaulay has argued that whilst such shows illustrate some aspects of the legal system they seldom give an accurate view of how the system typically works; nor even do they give a clue as to what happens rarely, and what typically.[39]

Ultimately, however, the way law is portrayed on American television says something about the nature of the America, it is often positivistic and naive.[40] Moreover, it may well do a disservice to justice in that it could be argued that it increases subjectivity toward the notion of culpability, in a public who are also all potential jurors.[41] More worrying still, as Stark has shown, is the very misleading conception of crime that the public derives from television, for example the over-representation of murder cases in terms of their comparatively rare occurrence in reality.[42] It also tends to see hard-fought-for

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[28] B. Kitei, 'The Mass Appeal of The Practice and Ally McBeal: An In-Depth Analysis of the Impact of these Television Shows on the Public's Perception of Attorneys' (1999) 7 UCLA *Entertainment Review* 169–87.

[29] S. Macaulay, 'Images of Law in Everyday Life' (1987) 21 *Law and Society Review* 198.

[30] Mezey and Niles, 'Screening the Law' (cited in n.4), 92–186.

[31] Friedman, 'Popular Legal Culture' (cited in n.1), 1579–1606.

[32] S. Gillers, 'Taking *L.A law* More Seriously' (1989) 98 *Yale Law Journal* 1607–24.

[33] W. Simon, 'Moral Luck: Legal Ethics in Popular Culture' (2001) 101 *Columbia Law Review* 428–32.

[34] Gillers, 'Taking *L.A law* More Seriously' (cited in n.32), 1607–8.

[35] Gillers, 'Taking *L.A law* More Seriously' (cited in n.32), 1618.

[36] Gillers, 'Taking *L.A law* More Seriously' (cited in n.32), 1618–20.

[37] Mezey and Niles, 'Screening the Law' (cited in n.4), 127.

[38] Kitei, 'The Mass Appeal of The Practice and Ally McBeal' (cited in n.28).

[39] Macaulay, 'Images of Law in Everyday Life' (cited in n.29), 210.

[40] P. Bergman and M. Asimow, *Reel Justice: the Courtroom Goes to the Movies*. (Kansas City: Andrews and McNeel, 1996).

[41] N. Finkel and J. Groscup, 'Crime Prototypes: Objective Versus Subjective Culpability, and a Common-sense Balance' (1997) 21 *Law and Human Behaviour* 209–30.

[42] S. Stark, 'Perry Mason meets Sonny Crockett: the History of Lawyers and the Police as Television Heroes' (1987) 42 *University of Miami Law Review* 229–82.

legal safeguards as obstacles to justice; in the American example, the *Miranda* warning.[43] The American crime drama is overwhelmingly reactionary and at the same time seems to posit that criminals tend to get their comeuppance.[44] What has been argued in the British context also serves as a general point in the American case regarding media portrayals of criminal justice: 'Even if the system changed its methods, in the public and media culture, criminal justice is still often understood as a spectacular, highly emotionally charged, drama of retribution.'[45]

There has been a great deal of discussion concerning the so-called *CSI Effect* which amounts to a concern about the exaggerated usefulness of forensic evidence and the way jurors, notably in the USA, have come to demand incredibly high standards of proof; and how this has led to a raising of the proof required to obtain a conviction.[46] An early study had claimed there was no *CSI Effect* whatsoever and that there was no evidence to support such a thing; and that claims that there was merely pointed towards deeper insecurity about justice from within: 'the psyche of the public and members of the justice system'.[47] Later studies, however, have tended to support concerns that some form of *CSI Effect* is working itself out through the American criminal justice system. It has been shown that jurors that viewed *CSI* are increasingly hesitant to believe forensic evidence presented at a criminal trial.[48] Lawson has argued that the *CSI Effect* has had a major impact in the 'realm of warping, skewing, and manipulating the realities of evidence in a way that threatens the accuracy of the verdict and the legitimacy of the criminal justice system'.[49] Lawson's major point is that:

[T]he danger that the *CSI* infection presents is not that jurors expect more forensic science, but rather that fictional entertainment will lead to misinformation about criminal investigations, prosecutions, and forensic science.

The problem is not merely a television show. The greatest threat is the inappropriate application of fictional analysis in real life cases, which in some instances has induced erroneous conclusions of fact and faulty decisions. The criminal justice system relies on laypeople, ordinary citizens untrained in the law to consider the evidence presented to them in court as neutral outsiders...The crime novels, television shows, and films depicting crimes, criminal investigations and criminal prosecutions are altered purposely for entertainment purposes, causing the line between reality and fiction to be intentionally blurred by artists to make film, novel, or television show seem real, yet still entertaining. The artists' motivation is not malicious; instead from such sources [they] may trick viewers into believing they are trained to some degree to interpret the law and science.[50]

Moreover, as Thomas has recently argued in the *Yale Law Journal*, the reasonableness, and economic sense, of using exhaustive forensic techniques in police investigations and thereafter in criminal court cases is now something that prosecutors must very much take to heart; especially since there is a growing sense among some members of the legal

[43] R. Rogers, K. Harrison, D. Shuman, K. Sewell, and L. Hazelwood, 'An Analysis of Miranda Warnings: Comprehension and Coverage' (2007) 31 *Law and Human Behaviour* 177–92.

[44] Robson, 'Lawyers and the Legal System on TV' (cited in n.3), 333–62.

[45] A. Doyle and R. Ericson, 'Two Realities of Police Communication' in C. Sumner (ed.), *The Blackwell Companion to Criminology* (Oxford: Blackwell, 2004).

[46] T. Tyler, 'Viewing CSI and the Threshold of Guilt: Managing Truth and Justice in Reality and Fiction' (2006) 115 *Yale Law Journal* 1050–85.

[47] K. Podlas, 'The CSI Effect: Exposing the Media Myth' (2006) 16 *Fordham Intellectual Property, Media & Entertainment Law Journal* 465.

[48] N. Schweitzer and M. Saks, 'The CSI Effect: Popular Fiction about Forensic Science Affects the Public's Expectations about Real Forensic Science' (2007) 47 *Jurimetrics Journal* 357–64.

[49] T. Lawson, 'Before the Verdict and Beyond the Verdict: The CSI Infection within Modern Jury Trials' (2009) 41 *Loyola University Chicago Law Journal* 169.

[50] Lawson, 'Before the Verdict and Beyond the Verdict' (cited in n.49), 171.

profession that jurors are more taken with forensics than with the practice and processes of the law.[51]

In terms of the use of language, Cole and Dioso-Villa have made the case that the whole *CSI Effect* debate is at another level the working out of a battle between two competing modes of language, the legal and the scientific. They point to:

[the] rising authority and prestige of science in a modern society. Science is popularly associated with such positive values as truth, certainty, goodness, enlightenment, progress, and so on...The *CSI Effect* would seem to resonate with anxieties about using law too little, and increasingly abrogating its truth-producing function to science...the *CSI Effect* would seem to give voice to fears of what we might call *hyperscientia*—too much science.[52]

In short, the *CSI Effect*, and the attention it has received from American legal scholars, represents the clearest case of a link between the consumption of television programming (and therefore language) and definite *effects* on the operation of the law, in *real-world* contexts.

A large number of the main American programmes have found their way on to British television screens. However, there is a separate genre of British, usually English, television dealing with law and lawyers, aside from the enormous number of cops and robbers shows. This English genre largely follows the American formula, though with an eye on the local production context and with its own set of foibles (i.e. eccentric characters, such as Judge John Deed, Kavanagh QC, Morse, and Rumpole of the Bailey) and conceits.[53] We should note here that in broad terms two main forms of programming are being consumed in the UK, i.e. American *and* English. The same is not true, or not to anything like the same extent, in the USA, though the accuracy of the specific legal processes represented may not matter to that audience as much as the signifiers of justice, like the clothes worn by the lawyers, the court architecture, etc.[54]

Indeed, the issue may not be so much to do with the media's ability, or otherwise, to impart *truth* concerning the law, as to do with its capacity to develop a legal consciousness and raise the level of debate generally. There may be no simple, or readily quantifiable, effects to measure at all; just an immeasurable heightening of awareness. What we might conclude, in the English example, is that the law is generally represented as a struggle for justice, which brings us back to the themes raised by Stuart Hall et al. and Colin Sumner, for as Robson has recently commented:

The justice agenda, though, dominates, TV lawyers challenge the malpractices of the system. A group of fighters for justice may legitimate the whole socio-economic system with their apparent demonstration that day in, day out, the individual has his or her day in court...The focus on the individual and the local hides what is happening at a structural level. The poor are not being enfranchised through court actions. Systemic institutional racism is not declining through the legal process. Solutions to the abuse of women are emerging from extra-legal organisations and actions like the refuge movement. Trusting in the legal system's remedies as shown on screen is comforting but involves a misplacing of trust.[55]

[51] A. Thomas, 'The CSI Effect: Fact or Fiction' (2006) 115 *Yale Law Journal* 70–2.

[52] S. Cole and R. Dioso-Villa, 'Investigating the "CSI Effect" Effect: Media and Litigation Crisis in Criminal Law' (2009) 61 *Stanford Law Review* 1373.

[53] Robson, 'Lawyers and the Legal System on TV' (cited in n.3), 343.

[54] S. Machura and S. Ulbrich, 'Globalizing the Hollywood Courtroom Drama' (2001) 28 *Journal of Law and Society* 117–32.

[55] Robson, 'Lawyers and the Legal System on TV' (cited in n.3), 355–6.

5. Supporting the status quo: policing and the courts

Doyle and Ericson analysed the ways in which the police communicate with the news media and try to set the news agenda themselves. They showed how the police often over-emphasize their ability to undertake successful crime control for the purposes of legitimating their role and profile.[56] They follow Hall et al. in noting the police as *primary definers* of news events and how the media are in a structurally subordinate role to primary definers.[57] They show how there is a deal of consensus on the role of the police in media coverage of news; and how media reporting tends to be skewed towards coverage of violent offenders, and what Robert Reiner has called high-status offenders and victims, and in doing this there is a tendency to make the case for a more effective police force than currently exists.[58] They argue that media coverage of the police generally supports the pre-existing, and underlying, views about policing in terms of its relationship to such variables as age, class, gender, and race and its focus on violence, high-status victims, and the heroic successes of the police. In doing this that news coverage tends to: 'reinforce one system of meaning about crime which is (already) prominent in public culture'.[59] The nature, and extent, of such news coverage tends to 'reinforce the punitive current in public media, and political discourse. The current feeds back into the system itself, fuelling alternative tendencies towards more expressive and punitive forms of criminal justice. It also justifies the elaboration of the surveillance-oriented risk-communication systems that characterize the everyday world of police work.'[60]

If we shift away from news coverage of the police to drama we see a set of processes similar to those Doyle and Ericson have discussed. Regina Rauxloh has shown how popular notions about crime are fed back to an audience, rather than challenged. Her 2005 study showed that, whatever the form of the society analysed, in this case democratic West Germany or communist East Germany, there is a general tendency to a conservative production focus. In her forensic study of the representation of policing on television in East and West Germany the police, and professionals in the wider criminal justice system, are ultimately portrayed as upholding, and reinforcing, an idealized notion of the prosecutorial process and an uncritical 'image of state and society'.[61] Her analysis shows that, although television drama can take a critical stance towards the police and the wider prosecutorial process, it rarely does so. It tends to reflect the public's pre-existing notions and rarely, if ever, looks at broader issues of criminalization.[62] In terms of the police's relationship with the prosecutorial authorities her study showed that these were unrealistic and that issues such as 'arraignments, pre-trial hearings, jury selection and plea-bargaining are rarely shown'.[63]

The portrayal of famous trials, often through reconstructed drama, has been something that BBC Radio has long since specialized in. Suzanne Shale undertook a major critical study of this genre in relation to the public understanding of law.[64] Her study showed that, perhaps inevitably, the portrayals of trials on BBC Radio were coloured by the medium that produced them. The values of the Corporation were present in all aspects of production, including selection and editing. Moreover, by concentrating on famous trials the producers presented a rather heroic view of the criminal justice system to a largely middle class audience; an audience which actively selects what it listens to. The whole enterprise did not so much elucidate legal principles as reproduce social conventions and popularly held ideas about the operation of the law. She argues that:

> The trial is a public ceremony and, in the contemporary world, the mass media determine the nature of the public for whom the ceremony is conducted. In conveying the message of the criminal trial, media do not passively represent an object to a public. On the contrary, if by legal process we mean all of the functions that law performs, the media are participants in the legal process in their role of reproducing the public ceremony...Whether or not we want to call famous trials broadcasts a form of law...they are indisputably part of something we should call popular legal culture: that constellation of attitudes, beliefs, knowledges, half-knowledges and flat misunderstandings about law that are by and large shared among members of a social group.
>
> The notion of a popular legal culture is perhaps undermined when we pose questions about the nature of the populus or social group which shares it.[65]

This is an interesting and important point to bear in mind: even if the radio production is *broad*casted it is nonetheless always received as a *narrow*cast.[66] In other words the audience for programmes is to a very large extent self-selecting. The audience for a BBC Radio broadcast on the trial process is necessarily a subset of the total listening population, which itself is made up of the aggregate number of listeners to a variety of programming.

6. Why does this matter?

The preceding discussion is not simply something that is of academic interest: it has very tangible social policy implications and affects the day-to-day workings of the criminal justice system. The issue is that regular members of the public ordinarily have no involvement in the legal process, though they all to a greater or lesser extent consume a version of it in the popular media. People tend to look, usually uncritically, to the media to furnish them with both information and entertainment, of a factual nature, about the law. The upshot of this process is that, as Gies has argued, the public's understanding of law is deeply enigmatic.[67]

On the one hand the public are increasingly aware of how to access legal services and of the content of laws through accessing the Internet and television, and on the other hand they often have a reductive, and non-technical, view of what law actually is. Moreover, Gies shows how this is mirrored in the types of material the public generally access online, which is often simplified, generic, and of little practical use in specific cases.[68] The point is that understanding law is a rather complicated enterprise which can be undertaken at a number of levels. There may be nothing false or directly misleading in any one single broadcast or piece of information discovered on the Internet but such a magpie treatment of how legal information is accumulated will always fall short of a

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56 Doyle and Ericson, 'Two Realities of Police Communication' (cited in n.45), 472.
57 Hall et al., *Policing the Crisis* (cited in n.16), 59.
58 R. Reiner, *The Politics of the Police* (Oxford: Oxford University Press, 2010).
59 Doyle and Ericson, 'Two Realities of Police Communication' (cited in n.45), 474.
60 Doyle and Ericson, 'Two Realities of Police Communication' (cited in n.45), 482.
61 R. Rauxloh, 'Goodies and Baddies: the Presentation of German Police and Criminals in East and West Television Drama' (2005) 6 *German Law Journal* 1000.
62 Rauxloh, 'Goodies and Baddies' (cited in n.61), 981.
63 Rauxloh, 'Goodies and Baddies' (cited in n.61), 990.
64 S. Shale, 'Listening to the Law: Famous Trials on BBC Radio, 1934–1969' (1996) 59 *Modern Law Review* 813–44.

65 Shale, 'Listening to the Law' (cited in n.64), 843–4.
66 C. Priestman, 'Narrowcasting and the dream of radio's great global conversation' (2004) 2 *Radio Journal* 77–88.
67 L. Gies, *Law and the Media: The Future of an Uneasy Relationship* (London: Routledge-Cavendish, 2008), 5–7.
68 Gies, *Law and the Media* (cited in n.67), 74–91.

thorough understanding; and the last word probably rests with the legal experts anyway. Gies argues that the best way to conceive of this process is to understand that there is a real and ongoing battle at play between the law and the media's version of it and that currently the media's account of law is, perhaps unavoidably, dominant.[69]

The sociologist Gerrard Delanty put it well when he wrote that: 'contemporary society involves the proliferation of second order observations for direct observation . . . We are approaching a society that in perpetually experimenting with forms of communication is making the form of communication central to the experience of social content: content has become form.'[70] This pithily situates the state of play vis-à-vis the popular understanding of law through consumed media. In drawing such a comparison, however, we should note how content is in the subordinate position. Smith and Natalier have developed this sociological notion in their work and have formulated a list of areas of major concern in relation to this deficit between the consumed form and actual content. In relation to television depictions of criminal law these are the promotion of unrealistically high standards for police and forensic science specialists, in terms of their ability to assist the successful prosecution of crime; the misrepresentation of the racial basis of contemporary crime; and the reduction of the legal process to a system of formal rules. In practice they side with Friedman in seeing that people understand law in terms of how it is represented, rather than how it actually is.[71] Moreover, moving on from Friedman's insight we can see that the whole system of production, values, and the sociological enterprise of representing legal matters goes uncontested.

7. Conclusion

What we can conclude from this survey of the topic is that there has been an increase in the depiction of law and legal issues (notably of crime) in the media and that this is, in turn, consumed. What we have not established is whether this has been an empowering development or not. It would be difficult to argue that through watching their television screens and reading newspapers the bulk of people are better informed about legal principles and processes, though there is evidence that this is a generally held perception. What people may be consuming is a simulacrum of the law, as represented to them, not the law as it is. Are the public better informed about the law? They may be, but if they are then they are only in the nursery class. Law proliferates and its jurisprudence is elaborate and its procedure a matter of technical knowledge.

So if there is a heightened folk understanding of law it is at a fairly basic level. Bernstein's socio-linguistic analysis of the relationship between the classification and frames of symbolic order and the structuring of experience and how this can lead to the 'pathological structuring of experience' is very elucidating here. Bernstein argues that when there is more commonality between persons it is more likely that their language will take a specific form. In other words, that a narrow set of social relations also narrows the likely range of meanings available, since language is enacted against a backdrop of common assumptions, common history, common interests.

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[69] Gies, *Law and the Media* (cited in n.67), 130.

[70] G. Delanty, *Modernity and Postmodernity: Knowledge, Power and the Self* (London: Sage Publications, 2000).

[71] P. Smith and K. Natalier, *Understanding Criminal Justice: Sociological Perspectives* (London: Sage Publications, 2005), 159–63.

Our current media therefore have definite hegemonic capacity and an ability to pacify. The citizenry may be falsely proud of their legal and specialist knowledge, garnered through consumption of contemporary media. The effects may be far from positive and, as noted earlier in relation to the so-called *CSI Effect*, it can result in a: 'realm of warping, skewing, and manipulating the realities of evidence in a way that threatens the accuracy of the verdict and the legitimacy of the criminal justice system.'[72] The entire process of media production can be hijacked, as in the case of victim's rights.[73] The public can only consume that which is front of them. The meta-analysis given by Colin Sumner and Stuart Hall sees censures being generated through the media in a fashion which combines with news coverage to focus moments of crisis into calls for more authoritarian state measures, as was the case for example in the Miners Strike in 1984–5.[74] Most media stories about crime tend to be of a traditional cops and robbers type and the white collar criminal is largely ignored. Crime in the media is typically portrayed as a problem associated with the urban working class. White collar crime especially is largely ignored by the media. There is never any criticism of the systems of production and the underlying socio-economic system that gave rise to it.

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[72] Lawson, 'Before the Verdict and Beyond the Verdict' (cited in n.49), 169.

[73] Rentschler, 'Victims' Rights and the Struggle over Crime in the Media' (cited in n.23), 235–6.

[74] B. Fine and R. Millar (eds), *Policing the Miners' Strike* (London: Lawrence and Wishart, 1985).