
Available from Middlesex University's Research Repository at http://eprints.mdx.ac.uk/12095/

Copyright:

Middlesex University Research Repository makes the University's research available electronically.

Copyright and moral rights to this thesis/research project are retained by the author and/or other copyright owners. The work is supplied on the understanding that any use for commercial gain is strictly forbidden. A copy may be downloaded for personal, non-commercial, research or study without prior permission and without charge. Any use of the thesis/research project for private study or research must be properly acknowledged with reference to the work's full bibliographic details.

This thesis/research project may not be reproduced in any format or medium, or extensive quotations taken from it, or its content changed in any way, without first obtaining permission in writing from the copyright holder(s).

If you believe that any material held in the repository infringes copyright law, please contact the Repository Team at Middlesex University via the following email address:

eprints@mdx.ac.uk

The item will be removed from the repository while any claim is being investigated.
Law and Language
Current Legal Issues 2011

VOLUME 15

Edited by
MICHAEL FREEMAN FBA
Emeritus Professor of English Law
University College London
and
FIONA SMITH
Senior Lecturer, Faculty of Laws
University College London

OXFORD UNIVERSITY PRESS
The Consumption of Legal Language: Consuming the Law

Dr. Anthony Anarrudu*

There has been a slippage away from understanding criminal law as the domain of specialists toward 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. 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. 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, 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 in our treatment of legal

cases. 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 there are 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 ‘scrutinizing law’ through popular culture as having definite ideological aspects.*

We can detect a merging of popular culture and law, especially in jurisdictions which concern 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. Law and the popular understanding of it through 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.‡

It cannot be sustained that the general public, jurors, and witnesses come to the law table note rather, it is the case that they come to the law after a lifetime of immersion in the law through an assentment of media portrayals, be they real or fictional. Moreover, all of this may be of only some minor sociological interest but for the fact that the media rely not on legal canon and procedure but on an over-simplified exploration 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. Leeks Zehner has argued:

Newspapers, radio and television carry reports of sentences, of judges’ comments upon passing sentence, of their implications, and of reactions to and solutions of them. Media commentary amplifies (and in amplifying may also distort) the message of the sentence, magnifying its impact and inviting public debate that amplifies it further still. The notion of moral panic being fostered through media attention to issues such as smuggling, mobile phone theft, and graffiti is something that academics, policymakers, and practitioners are all too aware of. In academic criminality Colin Summer long ago argued that:

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

---
* The author acknowledges useful criticisms from Professor Andrew Rajes, Professor Steven Wooten, and Dr. Kanita Perri.
¶¶ C. Summer, "Social Controversies, as Negative Ideological Forms, Are Thus Highly Targeted" (Chicago: University of Chicago Press, 2000).

1. Revisiting Sumner and ideology

Cullen, 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. In the ideological version of 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 no change the entire field of criminalological and legal research, which it saw as inadequate. As Sumner rather pithily stated:

"Whether we take their abstract, discursive definitions or their practical definitions in the course of law enforcement or moral reorganization, it is clear that the definitions of deviant behavior, 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. This is why 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 aculturated terms of moral and political judgment." 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, denunciating, 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 expressed unconscious—the fear of women, blacks, radicals, the working class and the colonized.' 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.' 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 demagoguery or abuse lodged within very complex, historically loaded practical conflicts and moral debates.'

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 muffing 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 policies 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. Hall et al., like Sumner, saw the black mugger as a scapegoat for wider social and economic failures. The attention that black muffing 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 used off as a deviance 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 culturally subjective terms rather than scientific categories and not up to the task of critical analysis.

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. He suggests that 'social censures combine with forms of power and economy to provide distinctive and important features of practices of domination and regulation.' 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 well as the analysis of deviance. Hall et al. see censures being generated through the media, 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 mass 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 system are heavily determined by the mass media.
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 culture 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 crimes are 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 crime in a highly patterned and predictable way, leaving the world's prisons full of poor people, is hardly an accident.'

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 'pathologised structuring of experience', i.e. a disjunction between the real and the represented.

Bernstein further tells us that the more communality 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. 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 views through its output and production values. In short, we can re-apply Bernstein's notion 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.'

So as pupils imbibes the values of their school, so do viewers, readers, and listeners imbibes 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. 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 narrative 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 public 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 those victim's families. Moreover, she shows how this 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-asserting a definition of crime as interpersonal breach between offenders and their victimised 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 enforcers and the courts 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 victim's rights discourse into the news media. They teach journalism as direct victim's rights discourse into the news media. They teach journalism 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 content itself. They teach advocates how to combine 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.

I think we see all too clearly here how a plot of victim-oriented news discourse can, over time, shape the Wildenhausen of persons away from the rational and sober in an over-rehearsed focus in the general population in its wake.

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. The most important of these was the erroneous promotion of a world more violent than it actually is, in 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 profiles 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...

32 Bernstein, *Class, Codes and Control* (cit in n.25), 116.
34 Rentschler, 'Victims' Rights and the Struggle over Crime in the Media' (cit in n.23), 219.
The Consummation of Legal Language: Consuming the Law

Perry Mason. The lead character was the virtuous in every way, kind-hearted, intelligent, urbane, and moral. He would see about 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 didn't get his client acquitted by showing the prosecution failed to carry the burden of proof. Instead, he proves his client's innocence by exposing the real killer. Surprise witnesses appear as 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.

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

A little later The Pugilist shows another side to the legal process. The plot involves a doctor, Richard Kimble, who is 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 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.

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 amidst 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. 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 minutes, drafting letters, and so on. 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 parts, corrupted by rich and powerful individuals and corporations. 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 customarily address, especially lawyers in private practice.

He argues that this represents a gross disconnection 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 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 accuses 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.' 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 principles 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 principles and procedure. He states that 'L.A. Law makes the lawyer-storyteller, a character.'

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 their cool, corrupting lawyers, and a legal system in which justice does not prevail always. The Practice was, though, usually characterized by its characters' love of the highest ideals of the legal profession. As Macey and Niles have argued, 'tou discomfit with the existence of the morally ambiguous criminal defence attorney was assayed by a significant role in the dramatic justice system, which... for all its imperfectness, is mostly effective, just, and superior to the imaginable alternative.' All the lawyers in The Practice were scrupulous 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 Kizil has detailed.

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 cause. Money, class, race, gender are no obstacle to the good cause winning, through America 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 illuminate some aspects of the legal system they seldom give an accurate view of how the system typically works; nor do they give a true sense of what happens rarely, and what typically.

Ultimately, however, the way law is portrayed on American television says something about the nature of the America, it is often positivistic and naive. Moreover, it may well do a disservice to justice in that it is suggested that it increases subjectivity towards the notion of culpability, in a public who are also all potential jurors.

More worrying still, as Stack 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. It also tends to see hard-fought-for
The Consumption of Legal Language: Consuming the Law

Legal safeguards as obstacles to justice: In the American example, the Miranda warning.116 The American crime drama is overwhelmingly reactionary and at the same time seems to posit that criminals tend to get their comeuppance.117 What has been argued in the British context also serves as a general point in the American case regarding media portrayal of criminal justice: Even if the system changes its methods, in the public and media culture, criminal justice is still often understood as a spectacular, highly emotionally charged, drama of retribution.118

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 juries, 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.119 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.120 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 juries that viewed CSI are increasingly hesitant to believe forensic evidence presented at a criminal trial.121 Lawson has argued that the CSI Effect has had a major impact in the ‘realm of warping, shaping, and manipulating the realities of evidence in a way that threatens the accuracy of the verdict and the legitimacy of the criminal justice system’.122 Lawson’s major point is that:

[The danger that the CSI infection presents is not that jurors express 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, to try the evidence presented to them in court as neutral outsiders... The crime novels, television shows, and films depicting crime, criminal investigations and criminal prosecutions are viewed for entertainment purposes, causing the line between reality and fiction to be intentionally blurred by authors to make film, novel, or television show seem real, yet still entertaining. The authors’ motivation is not malicious (designed to dupe such viewers) but may make viewers believe that they are trained to some degree to interpret the law and science.123

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 profession that juries are more taken with forensics than with the practice and processes of the law.124

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] existing 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 losing law too little, and increasingly delegating its truth-producing function to science... the CSI Effect would seem to give voice to fears of what we might call hyperscience—too much science.125

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 indeed law and society 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 onto British television screens. However, there is a separate genre of British, usually English, television dealing with law and lawyers, aside from the enormous corpus of cop and 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 failings (i.e. eccentric characters, such as Judge John Deed, Kavanagh QC, Morse, and Rumpole of the Bailey) and camera angles.126 We shall note here that its 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 correctness of justiciables, like the clothes worn by the lawyers, the court architecture, etc.127

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 immaterial 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 Sammer, for as Robson has recently commented:

The justice agenda, though, dominates, TV lawyers challenge the malpractice 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 level is what is happening at a structural level. The poor are not being emancipated through court actions. Systemic institutional racism is not declining through the legal process. Solutions to the abuse of women are emerging from extra-legitimate organisations and actions like the refuge movement. Trusting in the legal system’s remedies as shown on screen is confronting but involves a misplacing of trust.128


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


126 Robson, 'Lawyers and the Legal System on TV' (cited in n.30), 343.


128 Robson, 'Lawyers and the Legal System on TV' (cited in n.30), 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.39 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.40 They show how there is a dearth 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.41 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."42 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."43

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 Rauhoh 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 vs 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 unrealistic "image of state and society".44 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.45 In terms of the police’s relationship with the prosecutorial authorities her study showed that these were unrealistic and that issues such as 'arrangements, pre-trial hearings, jury selection and plea-bargaining are rarely shown'.46

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.47 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 act as 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 indistinguishable part of something we should call popular legal culture; that constellation of attitudes, beliefs, knowledge, half-knowledges and misunderstandings about law that are by and large shared among members of a social group.

The notion of a popular legal culture is perhaps underemphasised when we pose questions about the nature of the popular or social group which shares it.48 This is an interesting and important point to bear in mind: even if the radio production is broadcasted it is nonetheless always received as a narraceived.49 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 in 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 esoteric.50

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.51 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 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
through understanding, and the last word probably rests with the legal expert anyway. Gries argues that the best way to conceive of this process is to understand that there is a real and ongoing battle at play in the law and the media’s version of it and that currently the media’s account of law is, perhaps unavoidably, dominant.69

The sociologists Gerard 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 is perpetually experimenting with forms of communication in 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 Manfield 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 there are the promotion of unrealistic, artificially high standards for police and forensic science specialists, in terms of their ability to assist the successful prosecution of crimes; 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 misunderstand 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 unchallenged.

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 crime) in the media and that this, 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 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 minority. 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 frame of symbolic order and the structuring of experience and how this can lead to the psychological structuring of experience is very elucidating here. Bernstein argues that when there is more communality 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.

69 Gries, Law and the Media (cited in n.67), 130.

72 Lawson, “Before the Verdict and Beyond the Verdict” (cited in n.69), 169.
74 B. Fish and R. Mills (eds), Policing the Minorities (London: Lawrence and Wishart, 1985).