Law and Popular Culture: Popular Legal Culture as Media Legal Culture

Klaus F. Röhl

Long before the topic of popular legal culture became common, Wolfgang Kaupen has shown special interest in the knowledge and opinion about law of the general public. Therefore it seems adequate to honour him by some thoughts on popular legal culture.

This article has been prepared for the new edition of the Encyclopaedia of Social Sciences. It has been rejected by the editor Lauren Edelman because there was too much overlapping with entries on Legal Culture and Legal Consciousness and on Law and Everyday Life. However, the true reason for rejecting the article seems to be that it violates the American dogma of legal pluralism and does not appreciate the narrative mode of doing socio-legal research which is in fashion in the US.

1 The Legal Culture Approach

1.1 Culture and Legality

Some see law as largely marginal to modern life. Others assert that law constitutes society. One position does not contradict the other because they use different notions of law (Macaulay 1987:185). To avoid the difficulties of defining law here I differentiate between three layers of law or legality: (1) Law in the most specific and narrow sense consists of the state related system of rules and institutions (official law). (2) In a more general sense there is law, where customs and rules are organized in a way that provides special institutions and procedures for the maintenance of social order (institutionalized law). (3) The most encompassing notion of law finds "legality" in every rule or value, image or symbol, argument or story that serve to rationalize actions to others and to the actor himself (implicit legality).

The concept of culture is even more unspecific than the notion of law. For a working definition I refer to culture as a shared symbolic order which provides the signs, images, stories, characters, metaphors, and scenarios with which members of a group make sense of their lives and the world around them.

2 High Culture and Low Culture

For aesthetic or taste culture exists a well established distinction between high culture and low culture (Gans 1999). In this realm high culture and low culture separate when culture becomes the domain of experts and elites. Experts mainly control the supply side of high culture whereas the demand side is linked to educated people and the upper strata of society. For legal culture there is no simple analogy to the high culture/low culture distinction. Socio-legal literature does not intentionally talk about "high" and "low" legal cultures. Much more common is the distinction between internal and external legal cultures, introduced by Lawrence M. Friedman (1975:223): "The external legal culture is the legal culture of the general population; the internal legal culture is the legal culture of those members of society who perform specialized legal tasks", i. e. professional legal culture.

1.3 Folk Culture and Popular Culture

In earlier times low culture was folk culture. Under the impact of the media and the consumer industry low culture became mass culture, and as such it is called popular culture. Folk culture was and is the grass root culture of the people. Today's popular culture consists predominantly of stuff prepared by professionals for the general public. Popular culture is there-

fore not so much culture of the people but culture for the people. This seems to be true for legal culture, too. Therefore, for popular legal culture the same question arises as for popular taste culture: "Is popular culture something that is created in New York and Hollywood by skilled profit-seeking enterprises which have enough of monopoly over the supply of entertainment and information that they can impose almost anything they will sell …? Or are these enterprises themselves often unwitting agents of a culture in the anthropological sense, of a shared set of values or norms that they must try to express if they are to attract an audience and make their profits?" (Gans 1999:XIII) The provisional answer may be similar, too: "The mass media, and perhaps all of the commercial popular culture, are often engaged in a guessing game, trying to figure out what people want, or rather, what they will accept … the media executives who become successful by guessing correctly can often sense what an audience will accept, and frequently they are so firmly embedded themselves in the popular culture to which they are adding that they are 'representatives' of the audience, even if they may also be tough-minded and cynical businessmen and women at the same time." (Gans 1999: XIII-XIV)

Originally all legal culture was folk culture. In pre-modern stateless societies there existed no regulation but just conflict resolution which took place in a symbolic world of ordeals, mediation, and rituals without formal structures like codes, courts, and legal experts. In modern societies official law and institutionalized modes of social order have replaced legal folk culture. Only survivals remain. Illegal practices from duel to lynching in 19th century America or the honor-based defense for a man who killed his wife's lover are legal history as are the fencing laws in Australia described by Karsten (1998). Ewick and Silbey's observation that during the winter in certain American neighborhoods an old chair placed in a recently shovelled parking spot is understood as a claim for a type of ownership (1998:21) comes as a nostalgic idyll.

Whereas in tribal societies law was almost identical with conflict resolution in modern Western societies there remains no popular culture of conflict resolution either. Attempts to restore grass root justice or community mediation as non judicial forms of dispute processing have failed. Successful alternative dispute resolution programs are artificially imposed from above and connected to the official legal system. Popular legal culture does not any longer exist in rules and customs but in narratives which reproduce parts of the official legal system in a more or less distorted fashion.

2   *The Place of Law in Everyday Life*

Who as a lawyer observes everyday life is able to attribute legal importance to almost every social action. However, the general public does not interpret its everyday behavior as legally important. Everyday life happens in a world distinct from official law in a domain of taken-for-granted practices which serve to guide and interpret action. Popular culture shows its distance to the official legal system not only in taking its agents as butt for malicious jokes but in a profound scepticism about law's potential to deliver justice and in a strong distaste for using lawyers and courts to solve personal problems (Macaulay 1987:187). Watching the legal system from an armchair allows for a posture of almost ironic detachment. At the same time the justice motive is pervading everyday life. Equity research done by social psychologists has revealed a great supply of motives which direct the evaluation of an exchange as even. A law like vocabulary serves to justify action.

Attitudes about using the law to solve personal problems are complex and at first glance sometimes contradictory. The general public views at the legal system as a symbolically powerful resource and at the courts as an appropriate way to deal with conflict. But it does so from the perspective of an observer rather than that of a participant. Courts are considered good for other people's conflicts but personally most people would go to court only as a place of last resort. Nevertheless people go to court in considerable numbers. The judicial system com-

plains about a litigation explosion, and social scientists answer by linking litigiousness to the breakdown of informal social control. However, it is not the weakening of traditional authorities of family, church, and community as such that fosters the readiness to sue but a combination of a particular concept of individualism and the lack of an alternative in the case of conflict. The willingness to turn to legal institutions for the management of personal problems is triggered by specific turning points. Conflict or unforeseen loss raise a sense of entitlement. Conflict arises if expectations of what is natural and right are disappointed. These expectations are formed in turn by the implicit legality of popular culture. People who have their first encounter with the official legal system bring with them expectations learned mainly by the visual mass media. Everybody knows how to behave in a courtroom. The media have accustomed people to the adversarial mode of the American courtroom procedure. When people actually take up the invitations of the legal system they want their day in court. But they encounter legal officials who consider personal problems as "garbage cases" and try to funnel them into alternative modes of dispute resolution like mediation or therapy (Merry 1989:179).

3 Popular Legal Culture as Media Legal Culture

3.1 Media Coverage of the Legal System

Popular culture and as its part implicit legality are getting formed in many places, in neighborhoods and families, in education and sports, at the working place or in encounters with bureaucracy (Macaulay 1987). Yet the modern mass media are the outstanding mirror and shaper of popular culture.

Law and justice figure as a prominent topic of high culture, and "Law and Literature" has won some reputation in the academia (Posner 1996). But law stories make up an even bigger portion of popular culture. Crime and trials are particularly suitable for the modern mass media as the opportunities to sell quick and heightened visual and emotional gratification rebound. The courtroom offers a stage where deep cultural conflicts and anxieties are symbolically played out. The adversarial contest provides a battlefield for bipolar conceptions of right and wrong. Viewers can engage in questions of morality that are comfortably unambiguous. They can enjoy watching others suffer, identify with a charismatic and capable hero, fantasize in rebellion or punishment, and calm down when truth and justice triumph in the end. The insatiable need of the media for content has found in law stuff a seemingly inexhaustible source.

Every format used by the media can contain at least implicit legal messages, even music, spectator sports or advertisement. American entertainment which is dominating the market is laden with cultural values (or myths) which are attractive to people throughout the world - freedom, prosperity, self-determination, optimism and egalitarianism. The enormous subjective appeal has also something to do with the ubiquitous law stories which are understandable and attractive for a foreign audience, too.

Explicit law stuff is found in news, information, and entertainment. As a consequence detectives and crime, lawyers, and courts play an outstanding role in popular fiction and film. A whole range of special formats show legal plots, legal characters, and legal scenes, most of them, however, just as a background or narrative skeleton, rather than as an object of interest in its own right. Some courtroom dramas have become already movie classics (e.g. "Witness for the Prosecution", USA 1957, Billy Wilder). After private eyes and cops lawyers have conquered their place in TV-series, too (e. g. "L. A. Law" in the US, "Liebling Kreuzberg" in Germany). Court shows present authentic legal conflicts for reasons of entertainment (e.g. "Peoples Court" in the US, "Richterin Barbara Salesch" in Germany). Advisory programmes give information on selected legal problems. Beside documentaries docudramas offer reenactments of real events. In the US, since the 1990s a cable network is offering Court TV as

continuing coverage of trials (Goldfarb 1998). There is no representative research available that quantifies the covering of law in film or television.[1] Guesswork tells us that in this respect courts and lawyers outperform even doctors and hospitals.

3.2   The Portrayal of Law by the Media

Nobody would expect from the mass media a flawless and balanced picture of the legal system. What the media tell about law and legal procedure is fragmentary and lacking the sophistication of professional law talk. It is often conflicting, or misleading, or even wrong. Systemic distortions are due partly to the special needs and working conditions of the media but partly also to expectations of what the public will accept.

The media primarily care for news and entertainment value. Routine work, therefore, has little chance to appear on the screen. According to the popular view law in the media is predominantly criminal law. Defendants are predominantly white male businessmen or professional criminals. However, women kill and cheat much more than statistics indicate. Even though the film medium could be an ideal tool for probing the nature and causes of crime, e. g. by flashbacks that reveal the offender's motives or his environment the criminal act is usually shown without biographical embedding and social explanation. Only more ambitious crime films reflect and in turn perpetuate the criminological theory in vogue at the time they are produced (Rafter 2000:48). The amount of attention given the jury is disproportionate to their role even in the US. Miscarriages of justice get special attention beyond their real importance. The powerful role of courts as policy makers is neglected (Friedman 1989:1604).

Legal Culture is dominated by the written word. Popular culture is oral and even more visual. For the public the law is primarily embodied in requisites, rituals, and roles. The most significant requisites are court buildings and prisons, gowns and whigs, police cars and handcuffs. The typical seating arrangements of a courtroom, cross examination, swearing, and pleading serve as rituals. The law becomes lively by prominent roles, by attorneys and judges, jurors and sheriffs, warden and hangman. Film and the electronic media meet the needs of the public as they follow the imperative of images. As a consequence, e. g. Lombroso's biological theory of crime worked its way into movies because this kind of criminal anthropology is best translatable into visual codes (Rafter 2000:51). Another example of how the medium shapes the message is a stress on the importance of objective evidence for the outcome of proceedings because it is easy to visually conform "facts" (Kuzina 2000:277).

For presenting their offerings the media make use of the narrative mode of popular culture. They rely on recurring story lines, typical characters, conflicts and resolutions. Problems are caused by bad individuals rather than by society and its institutions, and they have to be overcome by exceptionally brave and skilled people. Predictable plots deliver the pleasure of variations of the familiar (Rafter 2000:9). The presumed public preference for substance over procedure is played out and reinforced through the standard plot of technicalities of due process blocking well deserved punishment and bending the rules to achieve justice. Not so seldom the hero turns to threats, dirty tricks or even violence thus cultivating the American myth of righteous violence.

4   The Impact of the Media upon Popular Culture

Statements on the impact of the mass media upon popular culture are tentative and weak. There is a common agreement, though, that the media play a central role in shaping public understanding of the world in general, that they help the people define what is good and bad, desirable and unworthy, lawful and illicit, thus influencing the structure of meaning that

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[1]   See, however, now Stefan Machura/Stefan Ulbrich, Law in Film: Globalizing the Hollywood Courtroom Drama, Journal of Law and Society 28, 2001, 117-132.

guides and organizes individuals and groups in everyday interactions and conflict situations. There is an ongoing debate on whether media representations of violence cause crime (Rafter 2000:65). Actually in Europe there is some concern that television productions like "Big Brother" could affect the sense for privacy.

Trials symbolize law as the ultimate power and authority of a single normative society. As few people are able to attend a trial in court the media coverage of legal affairs substitutes the ceremonial and symbolic performance of live proceedings. However, at the same time the media spread suspicion of authority and profound scepticism about the idea that abstract rules actually control legal decisions. Every law and society scholar knows that this scepticism is certainly sound. However, the reasons the media give for the weakness of rules is quite different from those named be the legal realist tradition. Popular culture holds to the notion that the law itself has a strong and clear content. For the public it is not the open texture of substantive law but the corruption and greed of its functionaries that make the law fail.

The central message popular culture receives from the media is ambivalent. Thus the media reinforce the ensuing public scepticism about law's ability to do justice. At the same time they reassure the audience that society and its system of justice are salvageable despite their many failings (Rafter 2000:9). In psychology it is well known that belief systems conventionally construed as solid and consistent actually contain contrary themes and unresolved ideological tensions. Yet the existence of apparent contradictions is vital to the utility of belief systems; ideological dilemmas permit the possibility of thought (Billig et al. 1988). The split image of law in popular culture, rather than a weakness, may be a crucial component of its power.

The media are under strong observation and therefore in general they strive for political correctness and try to avoid open discrimination. For the media everything that looks different is of news and entertainment value. As a consequence the media depict lifestyles, minorities, subcultures with a preference for non mainstream sexual behavior. Even if this may happen often with covert discriminative evaluation the public gets used to diversity as something normal. In this sense the media spread a "profound pluralism" (Friedman 1989: 1591). Scandalising is a basic strategy of the mass media. The concreteness and immediacy of the portrayal of the human suffering works as a norm generating force supporting human and civil rights.

5   *The Impact of Popular Culture Upon the Law*

Judges and lawyers stress the importance of public acceptance of law and legal institutions. But the law also claims to be a distinctive arena of social rationality which has no official entrance for popular culture. A great deal of interest and effort has been devoted to the study of opinions and attitudes of ordinary citizens. So far here is only little research on how the legal system is affected by broad values within the mass public.[2] Using film and fiction as class room tools opens only a small backstage door.

However, in the long run law cannot escape the forces and conflicts that play in culture at large. As Friedman has explained popular culture fosters a sense of legal entitlement which in turn influences the official legal system. Popular culture serves as an intervening link that connects the development of law with technical developments like telephone and computers or social change like urbanization or the "sexual revolution". The general idea is, that technical and social innovations first alter popular culture. "The germ theory of disease alters the way people feel about disease and their understanding of disease. They see disease, and the chance of curing it, in an radically different light. Out of this new consciousness flow de-

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[2]   From Germany Frank Neubacher, Die fremdenfeindlichen Brandanschläge nach der Vereinigung, Monatsschrift für Kriminologie und Strafrechtsreform 82, 1999, 1-15.

mands, some of them addressed to the legal system; and at the end of a string of events we find laws creating boards of health, laws mandating vaccination, food and drug laws, and so on." (Friedman 1989:1579). Similarly the physical mobility offered by the automobile very much contributed to the understanding of persons as individuals and as a complement to a sense of legal entitlement. "A chain of events led from the invention of the automobile to the living law of torts of the 1980's." (Friedman 1989:1587).

The behavioral enactment of law is shaped by popular culture, too. When legal actors respond to situations they do so on the basis of their everyday experience which is not totally wiped out by professional education. The way popular culture constructs crime affects at least police behavior and juror decisions. But even law professionals in exercising their discretion respond to situations on the basis of "folk" categories about the normal and expected.

The mass media meet upon an experienced audience which usually knows when the presentation of law is just a show. But the line between fact and fiction is vanishing itself. The media refer to media generated topics and events, people refer to the media, and crime is happening under media observation. Sherwin (2000:248) offers a pessimistic outlook by asserting that the vanishing line between law and popular culture gives rise to a legitimacy crisis for the legal system.

Bibliography

Barak G 1994 *Between the Waves: Mass-Mediated Themes of Crime and Justice* Social Justice 21: 133-147

Billig M et al. 1988 *Ideological Dilemmas* Sage, London

Chase A 1986 *Toward a Legal Theory of Popular Culture* Wisconsin Law Review 527-569

Denvir J (ed.), *Legal Reelism. Movies and Legal Texts* Urbana/Chicago 1996

Ehrlich E *Grundlegung der Soziologie des Rechts* Duncker & Humblot, Berlin, 1913 (*Fundamental Principles of the Sociology of Law* transl. by Mell W E 1936 Harvard University Press, Cambridge/Mass.)

Ewick P/Silbey S. S. 1998 *The Common Place of Law* The University of Chicago Press Chicago, Ill.

Friedman L M 1989 *Law, Lawyer, and Popular Culture* The Yale Law Journal 98: 1579-1606

Gans H J 1999 *Popular Culture and High Culture* 2nd ed., Basic Books, New York

Goldfarb R R 1998 *TV or not TV. Television, Justice, and the Courts* New York University Press New York

Karsten P 1998 *Cows in the Corn, Pigs in the Garden, and "the Problem of Social Costs": "High" and "Low" Legal Cultures of the British Diaspora Lands in the 17th, 18th, and 19th Centuries* Law and Society Review 32: 63-92

Kuzina M 2000 *Der amerikanische Gerichtsfilm* Vandenhoeck & Ruprecht, Göttingen

Macaulay S 1987 *Images of Law in Everyday Life* Law and Society Review 21: 184-218

Merry S E 1990 *Getting Justice and Getting Even* The University of Chicago Press, Chicago, Ill.

Nevins F M 1984 *Law, Lawyers & Justice in Popular Fiction & Film* Humanities Education 3-12

Porsdam H 1999 *Legally Speaking. Contemporary American Culture and the Law* University of Massachusetts Press, Amherst

Posner R 1996 *Law and Literature* rev. ed., Harvard University Press, Cambridge, Ma.

Rafter N 2000 *Shots in the Mirror. Crime Films and Society* Oxford University Press, New York

Sherwin R 2000 *When Law Goes Pop* University of Chicago Press, Chicago

Strinati D 1995 *An Introduction to Theories of Popular Culture* Routledge, London and New York