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Popular Culture and Law

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Popular culture and law exist in a symbiotic relationship. Recently, however, the line between the two realms has been vanishing, which may create a legitimacy crisis for modern, developed legal systems.

The Legal Culture Approach

High Culture and Low Culture

There is a well-established distinction between high and low culture for matters of taste or aesthetics. In this area, high and low culture separate when the former becomes the domain of experts and elites. Experts mainly control the supply side of high culture, while [p. 1147 ↓] educated people and the upper strata of society control the demand side links. For legal culture, there is no simple analogy to this high and low culture distinction. Lawrence Friedman introduced the distinction between internal and external legal cultures, a distinction that is now widely accepted. “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,” that is, professional legal culture (Friedman 1975: 223).

Folk Culture and Popular Culture

Originally, all legal culture was folk culture. In premodern stateless societies, there existed no formal regulation; conflict resolution took place in a symbolic world of ordeals, mediation, and rituals without structures such as codes, courts, and legal experts. In modern societies, official law and institutionalized modes of social order have replaced legal folk culture. Only remnants of the latter survive. Illegal practices from European duels to American lynchings, or the honorbased defense for a man who killed his wife's lover, are now artifacts of legal history. Peter Karsten described another example with the fencing laws in Australia. Patricia Ewick and Susan Silbey observed that during the winter in certain American neighborhoods people understand an old

chair placed in a recently shoveled parking spot as a claim for a type of ownership of that spot. Popular legal culture no longer coherently exists in genuine rules and customs, but rather in narratives that reflect parts of the official legal system in a more or less distorted fashion.

The Place of Law in Everyday Life

A lawyer observing everyday life in developed societies is able to attribute legal importance to almost every social action. However, the public does not interpret its everyday behavior as legally important. Prosaic living happens in a world distinct from official law, in a domain of taken-for-granted practices that serve to guide and interpret action. Popular culture shows its distance from the official legal system not only in portraying its agents, by making it the butt for malicious jokes, but also in a profound skepticism about law's potential to deliver justice, and often in a strong distaste for using lawyers and courts to solve personal problems. Watching the legal system from an armchair allows for a posture of almost ironic detachment. At the same time, the desire for justice pervades everyday life. Frequently, a lawlike vocabulary serves to justify social action.

Attitudes about using law to solve personal problems are complex and, at first glance, can be contradictory. For instance, people often consider courts useful for the conflicts of others, but personally would go to court only as a place of last resort. Nevertheless, people go to court in considerable numbers. In some countries, such as the United States, business leaders and politicians complain about a litigation explosion. Social scientists answer by linking litigiousness to the breakdown of informal social controls. 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 plus the lack of viable alternatives in the case of conflict. Specific turning points trigger people's willingness to turn to legal institutions for the management of personal problems. Conflict or unforeseen losses raise a sense of entitlement. Conflict arises if expectations of what is natural and right are disappointed. Images of law fostered in the popular culture largely form these expectations. When people have their first encounter with the official legal system, they bring with them expectations learned mainly from the visual mass media.

Popular Legal Culture as Media Legal Culture

Media Coverage of the Legal System

Popular culture and its implicit legality form themselves in many places, such as in neighborhoods, families, education, sports, the workplace, or in encounters with bureaucracy. Overall, though, the modern mass media are the predominant mirrors and shapers of popular culture.

Every format used by the media contains at least implicit legal messages, including music, spectator [p. 1148 ↓] sports, or advertisements. In addition, news, information shows, and entertainment contain explicit law elements. Consequently, detectives, lawyers, crime, and courts play an outstanding role in popular fiction and film. A whole range of special formats show legal plots, characters, and scenes, most of them, however, just as backgrounds or narrative skeletons, rather than as objects of interest in their own right.

The Portrayal of Law by the Media

Nobody would expect the mass media to portray a flawless and balanced picture of the legal system. What the media tell us about law and legal procedure is fragmentary and lacks the sophistication of professional legal language and argument. The portrayal is often internally conflicting, misleading, or even wrong. Systemic distortions are due partly to the special needs and working conditions of the media, but partly to what the public will accept.

The written word dominates legal culture, but popular culture is oral and visual. For the public, law primarily embodies itself in requisites, rituals, and roles. The most significant requisites are court buildings, prisons, apparel (gowns and wigs), police cars, and handcuffs. Rituals include the typical seating arrangement of a courtroom,

cross-examination, swearing in, and pleading. The law becomes lively by certain roles, with attorneys and judges, jurors, sheriffs, wardens, and executioners. Film and the electronic media meet the needs of the public as they follow the imperative of images.

The media, to present their offerings, make use of the narrative mode of popular culture. They rely on recurring story lines, typical characters, conflicts, and resolutions. Bad individuals, rather than society and its institutions, typically cause problems. Exceptionally brave and skilled people need to overcome those problems. Predictable plots deliver the pleasure of variations on the familiar. Hollywood satisfies the presumed public preference for substance over procedure with the standard plot of due process technicalities, which block well-deserved punishment. One must then bend the rules to achieve justice. Sometimes, the hero turns to threats, dirty tricks, or even violence, which in the United States cultivates the myth of righteous violence.

The Impact of the Media on Popular Culture

Statements about the mass media's impact on popular culture tend to be tentative. There is common agreement, though, that the media play a central role in shaping public understanding of the world in general, that they help people define what is good and bad, desirable and unworthy, lawful and illicit, thus influencing the structure of meaning that guides and organizes individuals and groups in everyday interactions and conflict situations. However, there is an ongoing debate on whether media representations of violence, including video games, actually cause crime.

Trials stand as a symbol of law as the ultimate power and authority of a single normative society. As few people are able to attend a trial, the media coverage of legal affairs substitutes for the ceremonial and symbolic performance of live proceedings. However, at the same time the media spread suspicion of authority and promote skepticism about the idea that abstract rules actually control legal decisions. Every law and society scholar knows that this skepticism is certainly sound. However, the reasons the media give for the weakness of rules is quite different from those held by supporters of the legal realist tradition. Popular culture subscribes 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 law fail.

The central message popular culture receives from the media is ambivalent. Thus, the media reinforce the ensuing public skepticism about law's ability to do justice. At the same time, they reassure their audience that society and its system of justice are salvageable despite their many failings. In psychology, belief systems conventionally construed as 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 [p. 1149 ↓] permit the possibility of thought. The split image of law in popular culture, rather than a weakness, may be a crucial component of its power.

The Impact of Popular Culture on the Law

Judges and lawyers stress the importance of public acceptance of law and legal institutions. However, the law also claims to be a distinctive arena of social rationality that has no official entrance for popular culture. Even though a great deal of interest and effort has been devoted to the study of opinions and attitudes of ordinary citizens, broad values within society in general seem not to directly affect the legal system. As pedagogy, one may use film and fiction as classroom tools, which open a small backstage door.

However, in the end, law cannot escape the forces and conflicts that play out 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 innovations, such as the telephone and computer, or social change, such as 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 a radically different light. Out of this new consciousness flow demands, 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).

Popular culture also shapes the behavioral functioning of law. When legal actors respond to situations, they do so based on their everyday experience, which shines through their professional education. For example, popular culture constructs crime in ways that affect police behavior and juror decisions. Law professionals then exercise their discretion in responding to situations based on folk categories about what appears normal.

The mass media project images to an experienced audience, which usually knows when the presentation of law is just a show. Nevertheless, the line between fact and fiction is vanishing. The media refer to media-generated topics and events, although people refer back to the media. Crime itself occurs under media observation. Richard Sherwin provides a pessimistic outlook for this development by asserting that the vanishing line between law and popular culture gives rise to a legitimacy crisis for the entire legal system.

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- [Communications Systems](#)
- [Courts](#)
- [Culture, Legal](#)
- [Customary Legal Norms](#)
- [Globalization and Law in Everyday Life](#)
- [Honor](#)
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- [Visual Communication in and about Law](#)

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