The Anthropomorphization of Law: Fictional Judges and Lawyers
in Contemporary North American and European Settings

by

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Abstract

This dissertation examines the varying roles of lawyers and judges in Canada, the United States, England, France and Germany in a selection of “fictional legal narratives”: novels, movies, television shows and plays that explore legal themes. The study focuses on contemporary works after 1960, and explores the North American fascination with lawyers that saturates the major levels of culture, from the popular (including television shows, movies and novels) to the academic. Fictional images of lawyers and judges not only reflect but arguably also influence our attitudes toward the legal system, and offer a concrete way of conceptualizing abstract legal concepts. However, the vast differences between the Anglo-American adversarial legal system and the continental European inquisitorial legal system spawn very different fictional portraits of lawyers and judges. The differences between fictional legal narratives produced by each country, even those with similarly structured legal systems, are also striking.

Chapter One begins by outlining a number of factors that contribute to the proliferation of fictional legal narratives in some countries, and their relative scarcity in other countries. Next, Chapter Two traces the wide range of lawyer images in American
fictional legal narratives, which both glamourize and demonize the figure of the lawyer. Turning to anthropomorphizations of law in the United Kingdom, Chapter Three examines the British tendency to perpetuate the idea that, if correctly executed, the fundamental principles of British law would lead to a just and harmonious society. Chapter Four then explores the “anxiety of influence” reflected in Canadian images of law, which are more “soft-boiled” than the fictional legal figures of other countries. Moving to French fictional legal narratives, Chapter Five contemplates the predominance of the juge d’instruction figure and the prevalence of the investigatory mode. The dissertation then discusses the relative scarcity of fictional legal narratives in Germany, and the cynicism in existing German stories about law in Chapter Six. The study concludes by considering the future directions of the law and culture movement, as well as both the challenges and rewards of this interdisciplinary work.
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Introduction

Exploring the Many Figures of Law

Why are North Americans so obsessed with lawyers? And why are popular cultural phenomena like legal thrillers and prime time legal dramas ubiquitous in North America while they rarely exist in continental Europe? The North American fascination with lawyers saturates the major levels of culture, from the popular (including television shows, movies and novels) to the academic. Images of lawyers sometimes reach funhouse-mirror distortions, but a grain of truth may lie at the heart of even the most grotesque caricature. Law is a “reflection of the human condition” (Brooks 15), and while literary interest in the legal is not a new trend, it is a burgeoning one. Fictional images of lawyers and judges not only reflect but arguably also influence our attitudes toward the legal system, and offer a concrete way of conceptualizing abstract legal concepts.

Scholars have struggled to pinpoint the exact reason for the popularity of the lawyer and, in some cases, the judge figure. But the reasons are many, and vary within different national contexts. Images of lawyers and judges vary greatly from country to country. The lawyer is sometimes glamorous, sometimes demonized, and sometimes a projection of modern-day malaise. The judge is sometimes heroic to the point of martyrdom, and sometimes callous to the point of indecency. Further, portraits of lawyers in continental European culture contrast greatly with their American counterparts. Concepts of ‘lawyer,’ ‘judge,’ ‘court,’ and indeed ‘law’ are highly culturally defined, but the differences underlying these labels often go unexamined. As the global economy continues to open, and as satellite television and international
marketing make cultural products available to other countries, understanding these differences is crucial if we are truly committed to facilitating cross-cultural communication.

The vast differences between the Anglo-American adversarial legal system and the continental European inquisitorial legal system spawn very different fictional portraits of lawyers and judges. However, the differences between fictional legal narratives produced by each country, even those with similarly structured legal systems, are also striking. This dissertation examines the varying roles of lawyers and judges in the United States, the UK, Canada France and Germany in a selection of “fictional legal narratives”: novels, movies, television shows and plays that explore legal themes. The study focuses on contemporary works after 1960, although in some limited cases, I discuss works slightly prior to 1960 that have had a continuing impact on contemporary representations and the understanding of legal figures. While at first the scope of this project seems overwhelming, in reality, the United States is the only country that produces large volumes of fictional legal narratives. Further, casting a wide net is necessary because the dominant genres representing legal figures also vary across cultures (e.g., while fictional lawyers enjoy popularity in the American legal thriller novel, fictional juges d’instruction feature frequently in French television and film). The broad scope of this study allows me to track representations in each culture without limitation to a single genre, and thus facilitates a broader understanding of how each culture anthropomorphizes law (i.e., articulates a concept through human figures).

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1 I use the term “fictional legal narratives” throughout. The term “legal narratives” also implies non-fiction narratives, and can be extended to include judicial decisions, which fall outside the scope of this study.
2 Many of these works have been adapted from one form to another, the most common form of adaptation being from novel to film. In most instances, I discuss both forms of the narrative together, noting differences where relevant.
Scholarly interest in the relationship between law and literature has given birth to an entire area of study. It began in the United States as “a relatively new field of inquiry, with a small but growing literature” in the mid-1980s (Friedman 1587). Slowly but surely, the movement has amassed a considerable body of scholarship in that country. Spearheaded by the Americans, two decades after its conception, the movement has outgrown its original name, “law and literature,” and is now alternately labeled with the broader titles of “law and humanities,” “critical cultural studies of law” or “law and culture.”

Outside the United States, theoretical work in this field is still in its infancy. This is hardly surprising, since the United States also produces the majority of fictional legal narratives. While other countries’ efforts are gaining momentum, and have undoubtedly made important contributions in this area, the quantity of work produced abroad cannot match in sheer volume the American interest in this topic.

Perhaps because of the relative newness of the discipline outside of the United States, the movement has largely failed to identify the variable definitions (and therefore representations) of law amongst different regional legal systems. The field misleads us with its use of the word “culture,” because it often fails to recognize that the law, the legal systems and the legal representatives reflected in the narratives of other cultures are very different in type. Much of the American theory is inapplicable to continental European representations, especially given the relative scarcity of lawyer protagonists in contemporary European cultural forms, but also considering the differences in legal professionals’ roles. This study attempts to address the gap in our understanding of these differences.

In Chapter 1, I tackle a central issue for this study. Despite the differences

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3 For no purpose other than ease of reference, I use the term “law and culture” throughout this dissertation.
between fictional legal narratives of different cultures, narratives of all countries
demonstrate an inherent divide between “law,” on one hand, and “justice” and/or
“morality,” on the other. These terms are carefully defined within the discipline of legal
theory, but are used much more loosely in fictional legal narratives. Further, the abstract
level on which legal theorists discuss these concepts differs from the highly concrete
manner in which most creative writers express the same concepts. Fictional legal
narratives explore these tensions through anthropomorphization rather than an
examination of the abstract qualities of these concepts. However, as mentioned earlier,
different cultures focus on different individual figures, and this chapter also examines
why lawyer stories are so common in North America, yet so rare in continental Europe.

Chapter Two compares the wide range of lawyer images in specifically American
fictional legal narratives with the approach to the individual in contemporary American
legal theory. In fiction, the lawyer is presented in a broad range of images in both
popular and “high art” texts. The lawyer is shown to be the “virtuous defender” in
Harper Lee’s *To Kill A Mockingbird*, but the law firm is represented as the “embodiment
of evil” in works like John Grisham’s *The Firm*. In less extreme characterizations, the
lawyer also appears at the centre of the struggle for a moral practice of law, such as in
Louis Auchincloss’ *The Diary of a Yuppie*. However, the lawyer can also be viewed as
an integral part in an abusive legal system, such as in Tom Wolfe’s *Bonfire of the
Vanities* and William Gaddis’ *A Frolic of His Own*. American representations of lawyers
offer the greatest range of images, but are still, at their heart, human stories that rely on
anthropomorphization in order to make sense of widely diverse concepts of law, morality
and justice.
Despite the importance of the British common law and the high social status of judges and lawyers in British society, as explained in Chapter 3, the volume of British fictional legal narratives pales in comparison to the volume of American work. There are, however, several notable examples of strong barrister and judge characters, and the influence of contemporary legal theory can be seen in many of these examples. The tension between natural law and positive law emerges in the debate surrounding Robert Bolt’s _A Man for All Seasons_, and the attitudes developed in the Critical Legal Studies movements can be shown to inform David Hare’s _Murmuring Judges_. Other British narratives celebrate and perpetuate a strong sense of faith the British legal system, and Chapter 4 explores the popular barrister character in John Mortimer’s _Rumpole of the Bailey_ stories, fictional solicitor Sarah Fortune in Frances Fyfield’s mystery novels, the heroic lawyer protagonist in Dexter Dias’ _The Rule of Law_, and the figure of the English judge in the popular television series _Judge John Deed_.

Canadian examples of the genre are also relatively few in comparison to the American body of legal thrillers and other legal novels, and existing Canadian works lack the range of images offered by American narratives. However, as the next chapter examines, Canadian fictional legal narratives are not simply copies of American works. The Canadian versions reveal unique aspects of our legal system and our culture. As a response to the American influence, Canadian writers have sometimes turned to postmodern techniques (e.g., in novels such as Margaret Atwood’s _Alias Grace_ and Andrew Pyper’s _Lost Girls_). Others have developed a strong tendency toward the “soft-boiled” lawyer protagonist. This is perhaps most evident in the novels of William Deverell, and Canadian television series like _Street Legal_. Many works reflect a sense of
Canadian identity through careful attention to local settings and particular multicultural dynamics. French-Canadian fictional legal narratives are even more rare, but Gratien Gélinas’s play, *Hier, les enfants dansaient*, reflects the unique political conflicts surrounding FLQ-era Canada.

The French are not as interested in fictional representations of their equivalent legal professional in France, the *avocat*; nor do they produce fiction that centres on the trial judge or the appellate judge. Instead, as Chapter 5 explores, the *juge d’instruction*, or examining magistrate, holds a prominent place in French culture. *Juge d’instruction* narratives, however, tend to showcase the primary function of their job: the investigation. There are certainly exceptions, but films like *Le juge Fayard, dit « le shérif »* and *Le juge*, television shows like *Madame le juge*, *Les Cordiers, juge et flic* and novels like Hubert Monteilhet’s *Mademoiselle le juge* and Xavier Patier’s *Le juge* all emphasize investigation over advocacy. With the exception of television shows, French fictional narratives often portray the *avocat* and the *juge d’instruction* as tragic, ultimately ineffective figures. Further, the competence of the French legal system in general is called into question in many of these narratives, and many fictional French figures turn to vigilante tactics in order to accomplish what the legal system cannot.

Despite strong contributions to the area of legal theory, there is a noticeable lack of fictional legal narratives in Germany. Contemporary German popular legal culture still bears traces of an “apocalyptic sense of law and judgment” that existed even prior to the Second World War (Ziolkowski). Germany has been much slower to process the events of the Holocaust through fictional legal narratives than other countries: Americans produced the movie *Judgment at Nuremberg*. As examined in Chapter 6, existing
Germanic fictional legal narratives continue to characterize the legal system in negative terms, with lawyers cast as part of an ineffectual process that is prone to oversimplifications (e.g., in Bernhard Schlink’s *Der Vorleser*), and as weak advocates against the slanderous media (e.g., in Heinrich Böll’s *Die verlorene Ehre der Katharina Blum*).

The argument in this study is based on the fact that mass culture continues to move at an ever-quicking pace; television cameras transmit trials straight into our living rooms, and we are increasingly invited by the media to play the role of the judge or the lawyer ourselves. In our daily lives, we are exposed to issues of law, justice, equity and fairness – often through human figures that reflect culturally defined values. In the process of importing and exporting cultural products, we risk losing an understanding of the differences between each culture’s courtrooms and legal figures. Despite these sometimes-vast differences, it is clear that American popular legal culture exerts a tremendous amount of influence on the popular legal culture of other countries. Yet, each country’s fictional legal narratives differ enormously, due to a range of factors that I will begin to examine in Chapter 1, and will follow throughout this dissertation.

Explorations into the figures in fictional legal narratives and the values they represent in our current culture will help us to understand others, while also helping us to understand ourselves.
Chapter One:

The Poet-Legislator and the Concept of Law

The reasons for the popularity of the figure of the lawyer, and to a lesser extent, the judge, are many and vary within different national contexts, as noted earlier. Rather than attempting to isolate one single factor, I would argue that there are a wide range of factors that work cumulatively to contribute to the proliferation of fictional legal narratives in some countries, and their relative scarcity in other countries. In this chapter, I begin to outline common themes that spark interest in fictional legal narratives, as well as providing a starting point for further discussion of the differences between the representations of lawyers and judges in each country.

The Poet-Legislator

Western literature has long been considered a forum for examining legal issues, and creative attempts to depict the “law” have flourished in the last century. “Poets are the unacknowledged legislators of the world,” wrote Percy Bysshe Shelley in 1819. His words are often quoted in the arena of law and culture, where it has become a commonplace that fictional legal narratives provide an alternative site for exploring issues that have not been resolved (or have been unsatisfactorily resolved) through legal avenues. A similar view exists within the slightly different context of female authors of detective fiction: “They use the popular novel as a lens through which to filter cultural issues and theoretical problems, providing a forum in which such issues and problems might be negotiated (if not solved) as part of the narrative of investigation” (Walton and Jones 4). Aside from simply “filtering” issues, popular legal culture has been used to

1 Common examples of canonical literature that examines legal issues include works by Shakespeare, Balzac, Dostoyevsky, Kafka and Camus (see, e.g., Posner 5).
further a wide array of political agendas, both to preserve the “master narrative[s] of bourgeois liberalism” (Hutcheon, A Poetics of Postmodernism 6), but also to challenge and subvert them.

It is also true that fictional legal narratives often express attitudes that coincide with views of contemporary law that are also espoused in legal theory. Yet, fictional legal narratives act as very different “lenses,” and “filter” issues very differently from the processes of the courtroom, the legislature, or legal theory. Cultural representations of law work in very different ways, and on different levels of abstraction. Fiction writers do not “legislate” on an abstract or collective level, as lawmakers and legal theorists do. The metaphor of the popular novel as a lens can be extended further: the individual protagonist within each novel focuses our understanding of cultural issues and theoretical problems. Yet, this focus differs across nationalities.

Mieke Bal writes that all cultures share the impulse to anthropomorphize ‘law’ – to situate legal concepts in a single representative figure (1). However, I would argue that some cultures are much less likely to anthropomorphize law than others, and not all cultures appear to be equally interested in understanding the law through fiction. The American fascination with the law in popular culture is unique. Other common law countries, including Canada and the UK, produce fictional legal narratives. Yet, no other country exhibits the intense interest in fictional legal narratives that exists in the United States. Further, German jurisprudence relies much more on the abstract idea of the “Legal Order” (“Rechtsordnung”) when conceptualizing law. In my view, this lack of concentration on the individual figure in legal theory contributes to the relative scarcity of legal narratives in German fiction (see my discussion in Chapter 6).
In the cultures studied in this dissertation, the responsibility for determining and assigning legal responsibility lies in the hands of many. Legal systems are composed of groups of people – individuals, granted, but individuals working together in a collective system. Despite its pluralistic nature, the legal system is almost always portrayed by focalizing concepts through particular figures, and most often through lawyers or judges. Fictional legal narratives almost invariably feature an individual protagonist (e.g., a single lawyer or judge) or an ensemble cast of characters (e.g., a small law firm of half a dozen lawyers within a larger one). Even when there are multiple storylines and ensemble casts, a few individual stories within the ensemble serve as lenses through which to understand the legal system. More often than not, it is the individual lawyer or judge’s inherent qualities that lead to the “just” or “moral” resolution of issues, whether through the legal system or through extra-legal means. Rather than offering a portrait of collective effort and a system working in harmony, the individual genius/hero continues to be celebrated at the centre of the Anglo-American and French legal traditions. Again, this is not the case in German fictional legal narratives.

As I noted earlier, the processes of investigation, advocacy and adjudication vary across cultures, and fictional images of the law reflect these variations. Portraits of lawyers in continental European culture contrast greatly with their American counterparts. In understanding these portraits, it is also important to understand the differences between each culture’s concepts of ‘lawyer,’ ‘judge,’ ‘court,’ and indeed ‘law.’ The diversity of roles that correspond to these signifiers springs from the considerable differences between the Anglo-American adversarial legal system and the continental European inquisitorial system, as I noted in the Introduction. In the Anglo-
American system, lawyers play a much larger role in gathering and presenting facts than in the continental model, where judges investigate facts much more actively. For example, in criminal matters, the French juge d’instruction, or examining magistrate, holds an enormous power to search, imprison pending trial, and sanction; Balzac wrote that “nothing can stand in his way” (qtd. in Leubsdorf 82). Not surprisingly, therefore, the differences in literary representations have a direct correlation to these very different legal systems.

Legal thrillers and prime time lawyer dramas are ubiquitous in North America, while they rarely exist in continental Europe. The “legal novel” is a firmly established genre in contemporary North American literature. The category encompasses works that are “overtly about the law,” and have been described as “imaginative literature with a legal subject” (Posner 37). Further, the “legal thriller,” a combination of legal and detective fiction, is a sub-genre of the American legal novel (37). In this North American context, legal identity is usually situated in the form of the lawyer, both in popular legal thrillers and more “literary” novels that function as social commentary on the legal system. However, these categories do not exist in France and Germany, where the popular “legal” genre is the detective novel, and the lawyer seldom appears as protagonist. Apart from the detective figure, these cultures tend to situate legal identity in more diverse personages. In France, the figure of the judge is much more prominent in fiction. In Germany, while lawyers and judges do appear as figures in popular culture, they appear far less often, and their positions are far more problematic than their counterparts in other cultures. In the subsequent chapters, I embark on an examination of the particularities of these figures within these cultures. However, before turning to an
in-depth examination of the differences between each culture’s figures, it is important to
examine how fictional legal narratives conceive of the law.

**Different Concepts, Different Levels of Abstraction**

The understanding of “law” has been marked by a snarl of conflicting definitions. H.L.A. Hart began *The Concept of Law* (1961) by acknowledging the numerous attempts to understand and define “law”:

> Few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question ‘What is law?’ Even if we confine our attention to the legal theory of the last 150 years and neglect classical and medieval speculation about the ‘nature’ of law, we shall find a situation not paralleled in any other subject systematically studied as a separate academic discipline. (1)

Similarly, in popular usage, both the “law” and “legal” can refer to many different concepts. The distinction between the substantive elements of law (A) and process-oriented elements of law (B) can also be helpful in understanding different national approaches to legal philosophy. James E. Herget writes: “The Germans are generally much more focused on the logical analysis of the legal order, the structure and the substance of the law, whereas Americans are mainly concerned, as they have been since the time of Holmes, with process, especially the explanation of appellate court decision making” (106). An examination of how fictional legal narratives work on different levels

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2 Legal philosophers cannot even agree whether certain movements prevail in certain countries. Some scholars, such as Brian Leiter, question the validity of categorizing legal theory by country: “Defining intellectual movements by nationality or geography is probably as common as it is misleading” (367). Leiter argues against approaches like that taken by Duxbury, who meticulously outlines what he calls “patterns” or “moods” in American jurisprudence (eschewing the terms “schools” and “movements”). Leiter criticizes Duxbury’s characterization of Hart’s work as “British positivism,” stating that Hart’s view of the law as a set of rules has had tremendous influence in the UK, but is by no means the only theory of law there. Leiter notes the importance of the fact that John Finnis, the leading natural law theorist, resides in England. The plethora of discordant definitions of law and its “patterns,” “moods,” “schools,” or “movements” only serves to underline the enormity of the battle for intellectual ownership over these concepts.
of abstraction will help to elucidate how different national approaches to legal theory are also reflected in fictional legal narratives.

I propose using four levels of abstraction to conceptualize the “legal,” ranging from the most abstract to the least abstract:

<table>
<thead>
<tr>
<th>A. Substantive elements of law</th>
<th>B. Process-oriented elements of law</th>
</tr>
</thead>
<tbody>
<tr>
<td>4) the “law”(^3) (i.e., as a set of rules); 4) the common law; legislation; 2) specific legal principles; 1) specific cases.</td>
<td>4) “the legal system” (i.e., as an anthropomorphized concept); 3) the courts, legislature, police; 2) individual figures within the legal system; 1) specific individual figures.</td>
</tr>
</tbody>
</table>

Herget’s observation about the German focus on the substantive elements of law (A) versus the American focus on the process-oriented elements of law (B) would explain why these two countries represent opposite extremes in terms of the volume of existing fictional legal narratives.\(^5\) A substantive approach focuses on the intellectual side of law, while the process-oriented approach includes the more human, and therefore more emotional side.

Most fictional legal narratives focus on very different referents than either judicial decisions or legal theory, rarely touching on the substantive elements of law. In contrast, legal theory often focuses on the law as an abstract concept, and uses specific cases to

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\(^3\) The ambiguity of the English term “law” is highlighted by the fact that continental European languages have two words to describe two of the levels of abstraction. “Das Recht, le droit, il diritto or el derecho” are words that refer to “a whole set of legal rules, whether based on legislation, judgments or jurisprudence (as in the phrase ‘the law of the land’ or ‘the law says’)” (Van Caenegem 2). “Gesetz, loi, legge or ley” denote “an act issued by the legislator (as in the phrase ‘Parliament passed a law’)” (2). The same distinction was also recognized in Old English, for example in the “Laws of King Ine of A.D. 688-95, which distinguish folces oew and domas, i.e., the traditional law of the people and legislative enactments” (3). The distinction was gradually occluded by the influence of terms from other languages.

\(^4\) The concept could be broken down from a number of different approaches. My point is not to set up rigid definitions for each of these levels, but simply to show that the “law” can be approached from a number of different levels of abstraction.

\(^5\) I am here leaving aside the anomalous abundance of German “scripted reality” or “Pseudo-doku” courtroom television programs, which in any case are based on a format imported from the United States.
illustrate more general principles. Both descriptive legal theory⁶ and normative legal theory⁷ work on an abstract level. When legal theorists turn to the legal system, they operate on the most abstract level, discussing individual figures only when needing to illustrate a point.⁸ The individual figures involved are usually judges, and not lawyers. Sometimes legal theorists even turn to fictional judges to illustrate a point. Lon Fuller, in “The Case of the Speluncean Society,” uses the written judgments of five fictional judges to represent different legal approaches. Ronald Dworkin employs the fictional Judge Hercules as an example of his ideal judge in Law’s Empire. However, legal theorists employ fictional narratives in order to bring greater clarity to abstract philosophies of law. In general, legal theorists do not focus on the personalities of the individual characters in these narratives; nor are they interested in the human emotion underlying legal reasoning. Every legal theorist will engage in a consideration of the nature of law, but not of the nature of individual lawyers or judges.

Judges, on the other hand, write decisions that apply principles developed from previous cases to the specific case at bar, but often with larger considerations in mind.⁹ Obviously, when judges’ decisions focus on the concrete level, they focus on the individual figure of the accused or the litigant.¹⁰ An example of the focus on the individual is the use of the “reasonable person” standard in tort law, where a defendant’s

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⁶ This “seeks to explain what the law is, and why, and its consequences” (Wacks 7).
⁷ This is “concerned with what the law ought to be” (7).
⁸ When discussing individual cases, the importance of the individual wrong is sometimes justified by an appeal to the greater importance of the case within the wider context of society as a whole. An example of this can be seen in David Dyzenhaus and Mayo Moran’s discussion in Calling Power to Account: Law, Reparations and the Chinese Canadian Head Tax Case: “Almost alone amongst the contemporary reparations claims, the decisions in Mack address the substance of the claim for reparation of historic injustice and in doing so raise profound questions about past and future, democracy and equality, as well as about the nature and role of law” (6).
⁹ It is important to note that in theory, French judges have much less decision-making power than their Anglo-American counterparts.
¹⁰ Only when lawyers have committed some egregious error do judges’ decisions focus on them.
conduct is measured against that of a fictional individual (originally conceptualized as “the man on the Clapham omnibus”\textsuperscript{11}). However, in this instance, the aim of focusing on the individual is to apply the law as a substantive entity (A), rather than to comment on the processes of the legal system (B). In judicial reasoning, there is often tension between the individual and the collective, such as in the balancing of individual rights and collective rights. However, the tension between individual and collective can exist on a purely abstract level, quite removed from any mention of a particular individual.

In contrast, fictional legal narratives work on the most concrete, individual level. The specific individual figures upon which they focus may be the accused or the litigant, but in Anglo-American culture (and particularly in American culture), the focus most often is on the figure of the lawyer. If there is a conclusion about the more general, abstract nature of the “law” that arises in a fictional legal narrative, it arises through the actions of the individual, and not through theorizing on the abstract level. Further, not every fictional legal narrative touches on the substantive nature of the “law.” In fact, many fictional legal narratives are silent about the “law” as a set of rules, preferring to limit their commentary to the maladministration of the legal system, and the corruption of particular individuals. In contrast to legal scholarship, almost every fictional legal narrative engages in a focused consideration of the nature of individual lawyers or judges, but not of the nature of the law as an abstract concept. Fictional legal narratives often inquired into personal motives that go beyond the courtroom and beyond legal theory. These stories often relate to the reasons why lawyers argue cases, how they go about arguing them, and the emotional influences behind that judges’ written decisions. The human elements of these stories place them firmly in the territory of the process-oriented

\textsuperscript{11} The phrase was coined by Greer LJ in \textit{Hall v. Brooklands Auto-Racing Club} (1933), 1 KB 205.
elements of the law. It is not surprising that fictional legal narratives should abound in the United States, rather than in Germany, given the different focuses of their approach to legal theory on the abstract level.\(^{12}\)

**“Law” vs. “Justice” and “Morality”**

While writers of fictional legal narratives work on different levels of abstraction than judges and legal theorists, they nonetheless consider many of the same issues that appear in contemporary jurisprudence. For example, “law” is often contrasted with “justice” and/or “morality”\(^{13}\) in fictional legal narratives, but this theme is explored through human figures, using language that is often vague and imprecise.\(^{14}\) Legal theorists take great care in defining these terms and debating the relationship between them. For example, the relationship between law and morality is has been hotly debated in legal theory:

There are, broadly speaking, two principal routes that might be taken. The first is known as ‘moral realism’, and proposes a meta-ethical view that certain moral virtues exist independently of our minds or of convention. Natural lawyers and those of a Kantian persuasion generally march under this banner. Secondly, there is the skeptical path, most closely associated with Utilitarians, such as Bentham, and legal positivists like Kelson, who deny the existence of any deontological, mind-independent moral values. (Wacks 14)

Further, in the natural law outlook, according to John Finnis:

the act of ‘positing’ law (whether judicially or legislatively or otherwise) is an act which can and should be guided by ‘moral’ principles and rules; that those moral norms are a matter of objective reasonableness, not of whim, convention, or mere ‘decision’. (qtd. in Wacks 25)

\(^{12}\) Again, this is simply one of many factors that contribute to the difference in appearance of fictional legal narratives. Other factors that are sometimes more influential, but are specific to each particular nationality, are explored in depth in the subsequent chapters. For example, the legacy of the perversion of justice under the Nazi regime and its effect on German fictional legal narratives are discussed in detail in Chapter 6.

\(^{13}\) And/or the related concept of “fairness.”

\(^{14}\) However, Timothy O. Lenz claims that the consideration of concepts such as natural law and justice are not a part of mainstream legal theory (10)(see my discussion in Chapter 2).
In contrast, positive law theorists, like Hart, deny any such necessary connection between law and morality (the “separability thesis”). However, despite denying a necessary connection between the two, Hart does stress the importance of considering morality:

So long as human beings can gain sufficient co-operation from some to enable them to dominate others, they will use the forms of law as one of their instruments. Wicked men will enact wicked rules which others will enforce. What surely is most needed in order to make men clear-sighted in confronting the official abuse of power, is that they should preserve the sense that the certification of something as legally valid is not conclusive of the question of obedience, and that, however great the aura of majesty or authority which the official system may have, its demands must in the end be submitted to moral scrutiny. (205-6)

While legal theorists dispute the separation of these concepts at a highly abstract level (with less emphasis on the concrete), fictional legal narratives consider the tension between law and morality at a very concrete level (with less emphasis on the abstract). However, it usually exists without the benefit of a clear definition of the concepts (although part of this lack of clarity in fictional narratives may mirror the dissention in academic understanding of these concepts). Further, while the debate has raged at a very abstract level in the theoretical realm, fictional legal narratives have considered the relationship between law and morality through the lens of individual characters. For example, aspects of the debate between Hart and natural law theorist Lon Fuller and in the 1950s and ’60s are manifested in certain fictional legal narratives, such as in Harper Lee’s To Kill A Mockingbird and Robert Bolt’s A Man For All Seasons, as we shall see in later chapters.

If the relationship between law and morality is contentious, the relationship between law and justice is equally unsettled. “Justice,” as concept in fictional legal narratives, is more often illustrated through characters’ actions than considered as a
concept. It is often simply equated with what is “right” in any given situation. However, even a cursory glance at the most basic definition of “justice” reveals that the meaning of the term is far from consistent in legal theory. Black’s Law Dictionary offers a definition of “justice” that refers back to law: “n. Proper administration of laws. In jurisprudence, the constant and perpetual disposition of legal matters or disputes to render every man his due.” The consideration of justice by legal theorists is hardly so simple. Raymond Wacks notes: “The subject of justice is, needless to say, an exceptionally large one. It is normally beyond the scope of most jurisprudence courses to pursue the complex philosophical debates that have raged for so long” (244). Aristotle’s view of justice may be taken as a starting point: “justice consists in treating equals equally and unequals unequally, in proportion to their inequality” (Wacks 243). Hart views justice as a distinct concept from law:

Not only is this distinct from other values which laws may have or lack, but sometimes the demands of justice may conflict with other values. This may occur, when a court, in sentencing a particular offender for a crime which has become prevalent, passes a severer sentence than that passed in other similar cases, and avowedly does this ‘as a warning.’ (161)

Other examples of differences between justice and the law would include those where a moral wrong has been committed, but no remedy is available due to “great difficulties of proof, or [because they would] overburden the courts or unduly hamper enterprise” (Hart 162). Further, Hart believes that “[j]ustice constitutes one segment of morality primarily concerned not with individual conduct but with the ways in which classes of individuals are treated” (163). However, this contrasts with other views of justice. Dworkin, for example, writes that “justice…is concerned with the decisions that the standing political institutions, whether or not they are fairly chosen, ought to make” (165). Despite the
inability of legal theorists to arrive at a clear consensus on the relationship between law
and justice, it is clear among them that these are concepts worthy of distinct definitions.

The separation between law and justice is inherent in the approach taken by
scholars in the Critical Legal Studies (CLS) movement, which reached its academic peak
in American universities in the mid-1980s, according to certain scholars (see, e.g.,
Duxbury 426). Many contemporary Anglo-American fictional legal narratives also
espouse views that are similar to those found in CLS,\(^\text{15}\) with its focus on the social
repression of the lower classes by the ruling classes, and its view of law as a tool of
power. CLS criticizes institutionalized unfairness in the law at an abstract level – in laws
themselves, but also in the way law is taught at universities, and in the systemic
unfairness that CLS sees perpetuated in the courts:

The central theme of critical legal theory is to doubt the prospect of
uncovering a universal foundation of law based on reason. It repudiates
the very project of jurisprudence which it generally perceives as clothing
the law and legal system with a bogus legitimacy. Moreover, its
acceptance of law as a distinctive and discrete discipline buttresses the
concept of law as autonomous – independent from politics and morality.
The myth of determinacy is a significant element of the critical assault on
law. Far from being a determinate, coherent body of rules and doctrine,
the law is portrayed as uncertain, ambiguous, and unstable. And far from
expressing rationality, the law reflects political and economic power.\(^\text{16}\)
Moreover, as many of the adherents of CLS seek to demonstrate, the law
is neither neutral nor objective. (Wacks 332)

\(^{15}\) See, e.g., William Gaddis’ *A Frolic of His Own* (discussed in Chapter 2), Margaret Atwood’s *Alias
Grace* (in Chapter 3), and David Hare’s *Murmuring Judges* (in Chapter 4).

\(^{16}\) Cf., however, James Boyle’s opinion that Critical Legal Studies views law as a “tool of the ruling class.”
He cites Peter Gabel and Paul Harris:

We reject both the orthodox view that law is simply a ‘tool of the ruling class’ and the
liberal-legalist view that powerless groups in society can gradually improve their position
by getting more rights. Instead, we argue that the legal system is an important public
arena through which the State attempts – through manipulation of symbols, images and
ideas – to legitimize a social order that most people find alienating and inhumane. (Qtd.
in Boyle xxix)
In contrast, fiction deals with race and gender issues on a more concrete level, placing responsibility on individual lawyers and judges, specific law firms and government agencies like the FBI, and on particular, definable communities. Identifying isolated instances of corruption or racism is not a main issue for CLS, where the focus lies chiefly on institutional factors. Further, fictional legal narratives seek to elucidate the emotional and personal aspects of race and gender issues, demonstrating their consequences in the life of an individual or group of individuals.

My point here is not to launch into an in-depth analysis of the merits of particular movements in legal theory, but to examine their relation to fictional legal narratives. Clearly, different types of discourse use different levels of abstraction and different focal figures to fulfill very different agendas. Relatively few fictional legal narratives are concerned with debating law as an abstract concept, as Hart and Fuller did. If fictional legal narratives do touch on abstract legal concepts, such considerations are likely to appear as part of a subplot or another element, secondary to the main narrative of the protagonist’s struggle against a corrupt legal system, a group, or an individual. More often, what we conceive of as “legal” in popular culture has more to do with the legal system than the law as a set of rules, especially when considering the tension between law, on one hand, and morality and/or justice, on the other.

However, the overarching message of fictional legal narratives of all of the countries studied here is that the law ought to be allied with morality, and that it ought be tied to justice. While there are certain narratives that focus on other issues than the

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17 E.g., the depression-era town of Maycomb in *To Kill a Mockingbird*; New York City mobs in Tom Wolfe’s *The Bonfire of the Vanities* (see Chapter 2).
18 Again, with the exception of *To Kill a Mockingbird*, and *A Man For All Seasons*. 

law/morality/justice divide,\textsuperscript{19} the vast majority of the works examined reflect the belief that law ought to reflect moral “goodness” and justice. This does not necessarily mean that all fictional legal narratives propound the tenets of natural justice, and it is important to recall that Hart was also adamant that law’s “demands must be submitted to moral scrutiny” (206). Further, fictional legal narratives tend to criticize the administration of the legal system, rather than applaud it. In fictional legal narratives, those in control of the legal system are often portrayed as immoral. The major exception to this occurs in television shows, in which the law, the legal system, and lawyers are often portrayed as efficient vehicles of morality and justice. There may not always be a consideration of whether the substantive law is based on morality, but there are often clear criticisms of the immorality of the legal system and its individual components. Also, many fictional legal narratives involve murder cases, where there is little dispute possible over the justice or injustice of the laws prohibiting murder.\textsuperscript{20}

**Definitions in “Law and Culture”**

The Law and Culture movement\textsuperscript{21} adds yet another layer of discourse to the already multi-layered understanding of law found in legal theory. In a wider sense, the Law and Culture movement is a social theory of law, one that attempts “to explain legal phenomena by searching for causes and causal factors ‘outside’ the legal system,” for

\textsuperscript{19} For example, Atwood’s *Alias Grace*, discussed in Chapter 4, focuses more on the construction of narrative than it does on the law/morality/justice relationship. Even in this case, however, an argument can be made that, by questioning the truth of the narrative constructed through the process of Grace’s trial, Atwood launches an investigation into the justice of Grace’s conviction.

\textsuperscript{20} There is, however, debate over the justice of capital punishment laws, and over whether a particular person in a particular circumstance has been unjustly accused. But the theoretical question of whether to punish someone who has committed cold-blooded murder does not arise. There often is more debate about the application of the law, or the application of what Hart calls “secondary rules” – courtroom procedure, rules of evidence, etc. – than there is about the characteristics of law as an abstract concept.

\textsuperscript{21} Again, it is important to note that this movement began in the United States, and is still in early stages in other countries.
example, from social, economic, cultural and political influences (Friedman 1579), or as a cultural phenomenon, as Clifford Geertz notes. Geertz suggests that law is not simply as a set of rules or a system of enforcing order, but “a distinctive manner of imagining the real…[not] merely a technical add-on to a morally (or immorally) finished society, it is, along with a whole range of other cultural realities, … an active part of it” (qtd. in Sarat and Kearns 6). Sarat and Kearns claim, further, that novels and plays with legal themes wrestle with this question as well, and show that law is “part of the cultural processes that actively contribute in the composition of social relations” (6).

However, other scholars in the Law and Culture movement disagree with the explanation of law as derived from society. Peter Fitzpatrick focuses on the mythologization of law in legal theory in The Mythology of Modern Law:

The gist of these social accounts [e.g., of Ronald Dworkin and Hart] is usually taken to be that law, rather than dominating society, is itself wholly a product of society. It changes as society changes and it can even disappear when the social conditions that created it disappear or when they change into conditions antithetical to it…. Yet if we observe these social accounts more closely, we can find a law that seems to be secure and persistent. The contradiction between this seeming autonomy and law’s social dependence is resolved, I argue, in the mythic elevation of law. The relation between law and such social forms as administration and community can hence be seen as a relation between mutually supporting mythic entities and not simply as one of opposition. (6)

While Fitzpatrick refers to the social accounts of legal theorists here, his comments are equally applicable to the social accounts of law espoused by Geertz, Sarat and Kearns. Fitzpatrick’s comments suggest that such social accounts of law are merely acting to bolster the mythic elevation of law, and that the work that needs to be done within the Law and Culture movement is to investigate this elevation, rather than to further support it.
“Justice” is an indeterminate concept in both Law and Culture studies and fictional legal narratives. Scholars in that movement often discuss the concepts of “law” and “justice” without clarifying their definitions of these terms. For example, Shoshana Felman, in *The Juridical Unconscious*, writes extensively about “law and justice,” “justice and injustice.” Felman discusses Walter Benjamin’s lack of use of the word “justice,” the relationship between silence and justice, and “theatres of justice” in relation to Holocaust trials. However, she does not define justice as a concept separate from law, and uses the term interchangeably with references to the courts and the law. Like many other scholars in the Law and Culture movement, Felman relies entirely on context, and on her readers’ implicit understanding of the distinctions between these terms. My aim here is not to single out Felman as a critic who fails to make this distinction. Rather, I note her work as an example of the looser way scholars outside the discipline of legal theory use terminology that legal theorists define so meticulously (yet also so inconclusively, as noted earlier). Such an implicit understanding of the term “justice” is relied upon in sociolegal approaches as well. Susan S. Silbey writes: “Although justice is the ground of critique, it is rare to find explicit definitions in sociolegal scholarship. Nonetheless, Ewick suggests elsewhere in this volume that justice is implicitly understood as a set of “standards against which power can be held accountable” (273). In fictional legal narratives, the understanding of the term “justice” is treated in a similarly implicit manner. While the separation between law and justice is often a theme, and sometimes a major theme, the nature of justice as an abstract concept is rarely discussed. Yet, this is highly problematic in a world where images of the law change rapidly,

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reflecting changing demographics in the legal profession, changing legal cultures, and changing ideas about the nature of law and justice. It is clearly impossible and undesirable to reify meanings, but without a common understanding of basic terms, we risk failing to communicate clearly, especially in global settings. In the worst-case scenario, we end up talking past one another, rather than engaging in meaningful dialogue.

Focalizing law through a single figure of the lawyer or the judge provides an opportunity, if not to resolve, then at least to negotiate the tension between law and justice/morality, along with other dichotomies that arise in the legal process. Another such dichotomy exists between “the ideals and the practices of law” (Silbey 279).

Fitzpatrick identifies other contradictory attributes within law:

Law is autonomous yet socially contingent. It is identified with stability and order yet it changes and is historically responsive. Law is a sovereign imperative yet the expression of a popular spirit. Its quasi-religious transcendence stands in opposition to its mundane temporality. It incorporates the ideal yet it is a mode of present existence. (x)

I would argue that in contemporary understanding, the individual figure of the lawyer or the judge mediates between these opposites. The enlightened individual, in Fitzpatrick’s estimation, is the “great mythic figure of the modern age” (34):

Light travels, as Hegel helpfully reminds us, from East to West, coeval with ‘the History of the World…,’ for Europe is absolutely the end of History. In this History, light ultimately comes to reside within, to be encompassed by, the fully conscious individual of Europe who not only knows but also acts on and makes the world: ‘by the close of day’, says Hegel, ‘man has erected a building constructed from his own inner Sun’…. This individual is the great mythic figure of the modern age. (34)

Although Fitzgerald never names the lawyer as the inheritor of this tradition, it is clear that the contemporary lawyer figure embodies elements of this mythic status. I would
argue, further, that the lawyer is a site – the main site in Anglo-American culture – of myth-building in contemporary fictional legal narratives. Lawyers and judges, due to their education and their elevated social status, are the inheritors of this tradition – they embody the “fully conscious individual.”

The perceived gap between justice and law sometimes manifests itself on the concrete level through vigilantism. Timothy O. Lenz refers to the “American Vigilante Tradition”: “Vigilantism occurs when an individual acting alone or a group acting together take the law into their own hands to dispense justice without regard for due process of law because the government is unwilling or unable to provide public safety” (38). Lenz notes that vigilantes can be heroic or tragic figures (if unjustly pursuing someone). He also writes that vigilantism is a political act: it appeals to popular sovereignty (i.e., the belief that “the people are sovereign”) (38): “Popular sovereignty is what gives vigilantism its ‘peculiarly’ American character. It provides a political theory of vigilantism which makes vigilantism part of the American political and legal tradition in the same way that jury nullification is part of the American political and legal tradition” (39). Yet, within the context of fictional legal narratives, surprisingly, it is in French culture, rather than American culture, where vigilantism surfaces as a legal figure. The French, who share with Americans revolution as a formative factor of their culture and the birth of their contemporary law, are prone to vigilante characters, for example, in their juges d’instruction. In contrast, Canadian, British and German fictional legal narratives are almost totally devoid of vigilante lawyers or judges. While some American lawyer protagonists fall into the category of the vigilante, many still exhibit an un-vigilante-like regard for due process and respect for the legal system. Further, some
notable examples, such as Atticus Finch in *To Kill a Mockingbird*, stand resolutely against vigilantism.

Clearly, there are narrative possibilities offered by the figure of the lawyer that contribute to the popularity of fictional legal narratives. In Anglo-American culture, the lawyer fits certain criteria for the perfect protagonist, according to screenplay guru Robert McKee: a protagonist “has the will and capacity to pursue the object of his conscious and/or unconscious desire to the end of the line, to the human limit established by setting and genre” (140). Further, because the figure of the lawyer facilitates movement between different levels of abstraction, beginning from an individual’s story that widens into a consideration of more abstract questions, for McKee, this explains the popularity of the figure:

This principle of starting with intimate problems that ramify outward into the world to build powerful progressions explains why certain professions are overrepresented in the roles of protagonists. This is why we tend to tell stories about lawyers, doctors, warriors, politicians, scientists – people so positioned in society by profession that if something goes haywire in their private lives, the writer can expand the action into society. (295)

Thus, the narrative possibilities offered by the lawyer as protagonist appear to be a major factor in the proliferation of fictional legal narratives in Anglo-American culture.

One of these narrative possibilities is that the individual figures of the lawyer and the judge also help us to conceptualize mass wrongs. The twentieth century has been marked by mass destruction – with our increased technology has come a vastly increased capability to destroy each other. Several scholars have pointed out that the last century’s mass atrocities have focused our attention on a wide-scale sense of injustice. Felman cites “the unprecedented number of disastrous events on a mass scale that have wreaked

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23 These are admittedly American criteria. McKee’s criteria may also influence the shape of the lawyer-protagonist in new fictional legal narratives, given his status in Hollywood.
havoc on the twentieth century” and the “unprecedented and repeated use of the instruments of law to cope with the traumatic legacies and the collective injuries left by these events” (2). Christopher Knight writes that “two world wars, the Holocaust, the Gulag, the Cold War, the Vietnam War, the Cambodian genocide, the African famines, Rwanda, and Bosnia” have forced us to take an interest in the question of justice (202).

Yet, the legal system is set up to handle disputes on an individual basis, which results in a relative incapacity to deal with wrongs on a mass level. Court systems seem inadequate in many situations. This is demonstrated in representations of the post-WWII era, in which the individual trials of Nazi war criminals present complex issues. In some fictional narratives, there is a sense of the inability of international law to bring the perpetrators of certain collective traumas to justice. Further, even when mass atrocities are the subject of fictional legal narratives, individual stories help us to imagine collective situations. Instead of taking either an abstract or collective view of these events, fiction asks us to understand law on the individual level. It is the individual’s story that allows us to relate to emotionally overwhelming situations.

“Trial-Interested” Cultures

In her influential 1998 article, “Law and the Order of Popular Culture,” Carol Clover explains, “some cultures are more, some vastly more, trial interested than others” (97). The Spanish and Swedish are reportedly disinterested in their own trial processes, but interested in American popular legal culture; there is anecdotal evidence of students at the University of Barcelona who could describe American trials in detail, but not Spanish trials (Clover 97). Further, according to a Stockholm newspaper: “The average Swedish tv-viewer knows more about the American justice system than the Swedish

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24 See my discussion in Chapter 6.
one…. We even know more about the British system than our own” (Clover 98). The same argument could be made with respect to the French, for whom popular American lawyer drama series have been imported and dubbed into French.

Clover claims that the proliferation of Anglo-American fictional legal narratives hinges on two distinctly dramatic factors in the Anglo-American trial: the adversarial structure and the jury (100). Clover writes: “It is something of a truism that the basis of the Anglo-American form in an adversary system and in oral presentation before a jury makes our trials fundamentally more dramatic than the inquisitorial and professionally judged trials of the Continent” (98). After acknowledging that this statement is a truism, Clover nonetheless bases her discussion on it. She admits that the vast majority of jury trials now take place in the United States, and that in the UK jury trials are much less prevalent. Jury trials are also rare here in Canada. However, Clover writes that this does “not detract from the stubbornly central position of the jury in the rhetorical architecture of the Anglo-American trial” (101). Mark Niles agrees with Clover, and attributes the relative commercial mediocrity of the movie A Civil Action to its dearth of courtroom scenes and its reliance on the less theatrical deposition format to carry the plot (10).

Notwithstanding the importance of the dramatic nature of the Anglo-American trial, there are many strong (and commercially successful) fictional legal narratives that do not depend on the drama of courtroom scenes (e.g., John Grisham’s The Firm and The Pelican Brief; Louis Auchincloss’ The Diary of A Yuppie; William Gaddis’ A Frolic of His Own; Margaret Atwood’s Alias Grace; Russell Banks’ The Sweet Hereafter, and Atom Egoyan’s film adaptation; etc.). While Clover makes a convincing point, I would argue that the Anglo-American fascination with fictional legal narratives stems from
many factors, not just one. In my view, the narrative possibilities offered by the figure of
the lawyer in Anglo-American culture, and the *juge d’instruction* in French culture, are
equally important.

However, there are still other factors that account for the popularity of fictional
legal narratives, especially in the United States. For example, certain critics peg
Americans as a particularly “law-interested” culture. The United States has been
categorized as a “‘law-dependent polity’ engaged in a ‘law-dependent democratic
experiment’” (Julius xxiii). Another critic writes:

Scholars who study law and American society frequently describe Americans as
an especially law-abiding people, a people with a love affair with law, a people
whose “uncanny reverence for law” serves as a kind of secular religion. Evidence
supporting this image includes the large number of lawyers in the U.S., the high
rates of litigation, the emphasis upon individual rights and due process of law, and
the fact that American courts have far more policy making powers than the courts
of other industrial democracies. (Lenz 23)

Yet, taken alone, none of these factors is strong enough to explain the volume of fictional
legal narratives. For example, the comparatively large number of lawyers in the U.S.
cannot be the sole factor for the interest in the legal profession. This far outstrips
popular cultural interest in other professions, for example in the accounting profession.
There are also a comparatively high number of accountants in the U.S., but no
“accountancy thriller” or “audit room drama” genres exist. I agree that the American
fascination with the legal stems from a combination of factors, but I would extend the list
beyond factors related to the influence of the court system to include things like money,
power and access to other resources.

For example, another critic theorizes that it is the lawyer’s relationship to money
that intrigues the American public:
The extreme importance of money in America, coupled with the “mass of failure” that is the underside of striking it rich, has left Americans with powerfully ambivalent feelings about their dogged pursuit of dollars, an ambivalence that contributes to the positive versus negative imagery through which Americans perceive the legal profession. While the relation of lawyers to power is seen primarily through the optic of lawyer indifference to mere economic competition and scrambling (as we shall see), in relation to money, lawyers are seen as the key to prosperity or bankruptcy – the professionals who know where the dollars are hidden and how to climb the financial tree. (Chase, “Lawyers and Popular Culture” 291)

Clearly lawyers’ struggles, whether external or internal, over power and money have caught the public’s attention. Peter Robson offers a similar view:

In his examination on television of the world of the legal bestseller Mark Lawson has suggested that the fact that tens of millions of people around the world are suddenly drawn to the same stories must surely tell us something about the way we live now. Success in life is measured in a material way. Life chances are significantly determined by people’s access to resources. In an alienated urban environment some go to the wall. This applies to employment, health care and education. Nowhere is the gap between haves and have-nots made more explicit than in the world of legal rights. (“Images of Law in the Fiction of John Grisham” 216)

Further, not only does the legal world magnify the division between the rich and the poor, the lawyer can navigate the confusing legal processes in which money, among other things, is often a high stake. This ability adds to the fascination with the lawyer as a figure of interest.

**Lawyers and Judges as Close Cousins to the Detective**

In some cases, part of the popularity of fictional legal narratives is borrowed from the detective genre. Figures of the lawyer and the judge are often close cousins to the detective, and legal fiction shares many elements with detective fiction, despite the dissimilarity in actual practice between detective work and legal work. In some fictional legal narratives, investigation plays a role that is as large or larger than advocacy or
adjudication, despite the relatively negligible role of investigation in the actual job of the lawyer or the judge.\textsuperscript{25} Ernest Mandel believes that the rise of the detective novel mirrored the “growing, explosive contradiction between individual needs or passions and mechanically imposed patterns of social conformism” (qtd. in Robson 215). The figure of the lawyer or the judge fulfills a similar function. Often, the fictional lawyer or judge starts with the same basic questions as the fictional detective, as identified by Heta Pyrhönen: “Whodunit?” and “Who is guilty?” (4). Yet, “Whodunit” questions only lead to “questions of fact” rather than “questions of law.”

The role of the lawyer or judge often overlaps considerably with the role of the detective. Pyrhönen outlines the four subgenres of detective fiction:

1. the \textit{classic detective story} (the \textit{whodunit}), “which presents a crime as a mystery to be solved”; 
2. the \textit{hard-boiled detective story}, where “the story of the crime recedes in importance, giving place to the story of the investigation, with a focus on what will happen next”; 
3. the \textit{police procedural}, which “keep certain facts concealed from readers; often we know from the start who the criminal is, while the police do not, so that the question is whether the police can solve the crime”; and 
4. the \textit{metaphysical detective story}, also known as the \textit{antidetective story, the postmodern detective story, and the analytical detective story}, where “the very ideas of mystery and crime are placed under scrutiny, especially the possibility of creating enigmas through narrative and linguistic means.” (21-2)

\textsuperscript{25} The exception to this, as mentioned earlier, is the French \textit{juge d'instruction}, whose job actually does involve investigation.
Further, many fictional legal narratives employ techniques that Pyrhönen identifies as standard to detective fiction:

1. the projection of the criminal (or in this case, the client) by processes of doubling (31);\(^{26}\)

2. the use of ‘abduction,’ which is “a mode of inference explaining how observations and data lead to the formation of conjectures, as well as accounting for the general principles conjectural thinking follows” (25);

3. ‘theming,’ or the formation of an overall story that coherently explains the clues, enabling the detective to come to a “solution to fit the mystery” (92).

Lawyers and judges use similar techniques. The lawyer or judge often doubles the figure of the accused or the litigant in the attempt to understand the truth in many cases. In their pursuit of justice, fictional lawyers and judges also rely heavily on abductive reasoning, despite the fact that abduction is not the predominant mode of analysis in legal arguments and judicial decision-making, in which deductive reasoning takes precedence.\(^{27}\) Further, in reading the guilt of the suspect, the fictional detective asks a series of questions, from “What kind (type) of person is this character?” and “What circumstances would have to prevail to make him or her the perpetrator of this crime?” (137) to “How do the detective’s values compare with communal values, on the one hand, and with the evidence we have of the implied author’s values, on the other?” (152). Clearly these techniques and questions are more pertinent to the understanding of some legal narratives.

\(^{26}\) Doubling involves the detective imagining himself in the criminal’s situation, sometimes by using the “I-am-you” approach, which entails the imaginative and affective adoption of the other’s perspective and situation. ... [The detective] produces an image of the opponent’s mind by treating his own mind as other to itself and probing its reactions” (Pyrhönen 31). An explicit example of the I-am-you technique can be found in the French film Généalogies d’un crime, which I discuss in Chapter 5.

\(^{27}\) Hart notes that deductive reasoning “for generations has been cherished as the very perfection of human reasoning” (“Positivism and the Separation of Law and Morals” 607).
than others. But while one might suppose that the lawyer ought to be more concerned
with crafting a narrative in order to win the case, rather than attempting to assess the guilt
of the client, the lawyer is often concerned with same questions that detectives ponder.
However, the focus on more personal elements of the lawyer’s life in some narratives
sometimes eclipses these questions entirely.

**Mass Culture and Perceptions**

The reality of decreasing crime statistics is not reflected by general perceptions
(Lenz 169). Crime, especially murder, is still the predominant subject matter of fictional
legal narratives, despite the vast range legal issues in real life. For example, civil law
suits abound in reality, but are vastly underrepresented as a topic in fictional legal
narratives. In addition, the popular understanding of the legal system is dominated by the
perception of unjust outcomes, as widely circulated in the media. Sensationalist news
channels and tabloids now show an intense interest in the personal lives of celebrities, so
that headlines of a dispute in Zimbabwean courts regarding the recount of ballots in the
presidential election might share the front page with “news” of Paul McCartney’s divorce
proceedings.\(^{28}\) The courtroom has become a venue for entertainment, both through the
broadcasting of live trials and through the media attention brought to the legal problems
of celebrities. The legal system has become yet one more cultural product to be
packaged, exported, broadcast and otherwise circulated.

However, with the increased presence of technology in our lives, people are
naturally also more aware of the failures and shortcomings of the legal system. I would
argue that a large part of popular fascination with crime novels, and their particular focus
on the forensic aspect of the criminal trial, is that the gap between technology and human

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\(^{28}\) This example dates from April 2008.
destruction continues to widen. The inability to overcome crime, and the social inequality that still exists in the world today, despite technological advances and developed legal systems, seems to puzzle theorists, writers and readers alike. Further, with more technology, there is more access to popular culture. Popular culture affords increased opportunities for the articulation of both collective desires and the mass dissemination of individual opinions. There is not only more litigation, but more participation in legal and administrative processes generally, and all of this naturally leads to an increased interest in lawyer stories (although it is also possible to argue that the influence flows in the other direction).

In a very real way, mass culture influences the way we conceive of the world – even the highest levels of legal decision-making are not immune from the reach of television. This is evident in American Supreme Court Chief Justice Scalia’s comments on torture, as reported in the Globe and Mail:

Senior judges from North America and Europe were in the midst of a panel discussion about torture and terrorism law, when a Canadian judge's passing remark – “Thankfully, security agencies in all our countries do not subscribe to the mantra ‘What would Jack Bauer do?’ ” – got the legal bulldog in Judge Scalia barking.

The conservative jurist stuck up for Agent Bauer, arguing that fictional or not, federal agents require latitude in times of great crisis. “Jack Bauer saved Los Angeles. ... He saved hundreds of thousands of lives,” Judge Scalia said. Then, recalling Season 2, where the agent's rough interrogation tactics saved California from a terrorist nuke, the Supreme Court judge etched a line in the sand.

“Are you going to convict Jack Bauer?” Judge Scalia challenged his fellow judges. “Say that criminal law is against him? ‘You have the right to a jury trial?’ Is any jury going to convict Jack Bauer? I don't think so.” (Freeze A9)
Justice Scalia’s stance on torture is terrifying in itself, but even more frightening is the fact that he chose to champion a fictional character who regularly resorts to torture. Justice Scalia’s statements indicate the all-pervasive influence of the mass circulation of images in contemporary society. Apparently, not even those in the highest positions of power are immune to the effects of fictional narratives.  

Many fictional legal narratives fall into the category of popular culture, and as such, tend to validate the status quo. Linda Hutcheon’s definition of popular fiction highlights this inclination:

‘Popular’ fiction generally means light entertainment, those works which tend to confirm, and rarely challenge, our beliefs. For this reason, however, they can often exemplify cultural patterns even more overtly or more stereotypically than more ‘serious’ fiction does. This kind of novel frequently relies on preformulated narrative structures, and, for this reason, is often referred to by the collective title of genre or formula fiction. (The Canadian Postmodern 192)

Mark Niles argues that the courtroom drama’s popularity rests partly on its formulaic appeal. He also believes that its form is also so familiar by now to Western popular culture audiences, that its characteristic tropes – the opening and closing arguments, evidentiary objections, even jury deliberations – provide the viewer with the kind of comfort that enhances the ability of the text to receive a positive response from the largest possible audience (10).

Not all of the fictional legal narratives examined here belong to the realm of popular culture. As mentioned earlier, while television shows across cultures tend to portray the legal system as “just” and lawyers as agents of justice, other forms do not do so as consistently. There are plenty of popular narratives with preformulated structures that

29 Scalia is not the only one affected by the TV character’s torture tactics. In his article, “Duped about Torture,” Dan Froomkin of the Washington Post notes: “The Guantánamo lawyers charged with devising interrogation techniques were inspired by the exploits of Jack Bauer in the American TV series 24.” Clearly, fictional narratives have the power to influence behaviour in very tangible ways.
nevertheless demonstrate a complex vision of law. Yet, certain critics warn of the limitations of literature to accurately reflect the processes of law (Posner). Further, others caution that popular cultural renditions of the law are limited, in that lay conceptions, while based on experience, may be “filtered through a consciousness distorted by ignorance or bias” (Friedman 1593).

Yet, the potential inaccuracy of fictional legal narratives is mitigated by the fact that the vast majority of writers of Anglo-American popular legal narratives are lawyers or ex-lawyers themselves. If fictional legal narratives are filtered through a consciousness,” as Friedman writes, it may be a consciousness of bias, rather than ignorance. The themes in their stories reflect their personal experiences of the legal, and reflect on some level their understanding of themselves. However, the most cutting (and frequently quite accurate) contemporary narratives about the law are not written by lawyers (e.g., William Gaddis’ A Frolic of His Own, David Hare’s Murmuring Judges), whereas the most positive and heroizcizing have been written by the legally trained (television shows about small firms with “good-guy” lawyers: Street Legal, created by William Deverell; David E. Kelley’s LA Law, Ally McBeal, The Practice, Boston Legal; even Harper Lee had a year of law school under her belt, and a father who was a lawyer). Lawyer-authors rarely venture away from the established genres of the legal thriller and the courtroom drama. (Perhaps it is their “professional de-formation” and the habit of citing precedent that lead them to look for new ways to inflect genres, rather than inventing new categories altogether.)

In the increasingly globalized world in which we live, mass culture carries tremendous influence. Unfortunately, our current environment is sometimes saturated

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30 A good number of them admit to looking for an alternative to the rigorous demands of legal practice.
with tabloid journalism and sensationalist headlines, but also with narratives that uphold
the status quo without offering real insight into the issues they nonetheless sometimes
address. Yet, readers are looking for input, commentary and direction at a time when
litigation is increasingly a part of everyday life. Fictional legal narratives, both popular
and elite, have the opportunity to offer real insight into the condition of our current
society, and to provide a “lens” through which to view contemporary life.

**Different Cultures, Different “Lenses”**

If fiction offers a “lens” through which to view cultural issues and theoretical
problems, each culture offers different lenses through which to view various issues and
problems that arise uniquely within each nation. While it may be misleading to define
intellectual movements by nationality, as we have seen, it must be admitted that certain
legal theories find their reflection in their national culture. While jurisprudence is by no
means the only, or perhaps the most important influencing factor, academic ways of
looking at the law do sometimes filter through to popular legal culture. In the works in
each of the five countries chosen here, the tensions between law and justice/morality are
elaborated in slightly different ways, not only because of the focus on different figures in
each culture. It is the theoretical movements in each country that also shape
representations in fictional legal narratives. In the USA, the influence of the Critical
Legal Studies has crept into the fictional legal narratives of the day. The UK’s strong
tradition of legal positivism is also reflected in its popular legal culture. However, there
are other considerations, like political and historical aspects, that also have a large
influence on the shape of each culture’s fictional legal narratives. For example, I would
argue that, in addition to the tendency of German legal theorists to conceptualize legal
issues on a highly abstract level, Germany’s experiences with the collapse of Weimar constitutionalism has profoundly affected its view of the law and its faith in lawyers and judges to safeguard justice. The following chapters explore each country’s jurisprudential, political and historical particularities in depth.
Chapter 2

Glamorization and Demonization:

The Extreme Images of American Lawyers

Categorizing the American Lawyer

The culture of the United States, more than any other country, is saturated with stories about lawyers. On television, at the movies, and in fiction, images of lawyers abound. In recent years, writers like John Grisham and Scott Turow have made millions penning legal thriller novels, many of which have been adapted into Hollywood blockbusters. Legal drama series like The Practice and Boston Legal have been mainstays of prime time television. Even elite authors, like William Gaddis, have dedicated hundreds of pages to examining the legal system and its participants. The saturation of American culture with lawyer images is not a new trend, but it is a growing one. Consequently, here more than any other country, the figure of the lawyer provides a site for understanding the divide between “law,” on one hand, and concepts of “justice” and “morality,” on the other. These concepts are highly subjective, contingent upon context, and change over time, resulting in a wide range of lawyer images. As noted in Chapter 1, the anthropomorphization of these concepts in American fictional legal narratives contrasts with the highly theoretical way in which contemporary American jurisprudence considers the same concepts. Legal theory, while to some degree considering the figure of the lawyer as an agent of legal reform, more often contemplates the role of the court system and legal doctrine as the sites of understanding the abstract concepts of law, justice and morality.

In the mid-1980s, academic interest arose in the study of representations of
lawyers in American mass culture. Lawrence Friedman’s seminal article, “Law, Lawyers and Popular Culture” (1989), describes the study of popular legal culture as “a relatively new field of inquiry, with a small but growing literature” (1587). From these humble origins, the field has grown into a robust discipline, with an established body of work. Generally, the field of law and literature can be broken down into several areas: 1. the study of legal themes and issues within literary texts, film and television; 2. the application of literary theory to legal texts such as judicial decisions; 3. the use of literary studies in legal education; and 4. the regulation of literature by law (Posner). This dissertation is limited to the first area, and more specifically to the representation of the specific figures of the lawyer and the judge as they vary from country to country.

A progression of images of the American lawyer in film, television and novels is identified in Anthony Chase’s article, “Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys” (1986). Lawyer images range from the “New York shyster” character popular in the 1930s, to the virtuous “defender” archetype in the 1960s, to a darker, more negative image in the years leading up to the mid-1980s (282-290). Chase insists that “legal movies are more than courtroom drama” (Movies on Trial xii), and that scholarship should look to film and literature as the place to understand the “relationship between law and justice, between equality and the legal system” (xiii). More recently, Michael Asimow has also examined portrayals of lawyers and law firms. Asimow concludes that such representations are marked by a “sharply increased

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1 Julie Stone Peters offers an alternative analysis of the content of the movement. She writes: “While law and literature has sometimes been considered an incoherent catchall, one might heuristically identify its three major projects: humanism (dominant in the 1970s and early 1980s and focusing largely on literary texts), hermeneutics (dominant throughout the 1980s and focusing largely on literary theory), and narrative (dominant in the late 1980s and 1990s and focusing largely on legal cases)” (444).

2 Chase also notes “the ‘over-representation’ of legal professionals on TV and their high occupational ‘index of power’ among viewers” (“Lawyers and Popular Culture” 551).
negativity of the portraits of all lawyers (including solos as well as big and small firms) in films of the last thirty years” as well as a “belief that big firms are engaged in an ugly business rather than a noble profession” (“Embodiment of Evil” 1370).

Attempts to generalize current representations of the American lawyer sometimes miss the fact that the lawyer’s image is multifaceted: sometimes aligned with “justice,” and sometimes far from it. American lawyer characters can be situated along a wide spectrum, from the glamorous and/or heroic, to the dishonest and/or bored. Some narratives show the American legal system as capable of resolving disputes, with the lawyer as an integral part of this process (e.g., in To Kill a Mockingbird). Other narratives offer a view of the American legal system as a corrupt, ineffective vehicle for procuring justice. Heroic images of lawyers featured in many American legal thrillers (e.g., those novels by John Grisham and Scott Turow) are distinct from the pictures of lawyers in novels by Tom Wolfe and William Gaddis. In the latter, lawyers may be wealthy, but they are also dishonest, bored and/or intellectually shortsighted. Further, within one narrative, there may be several lawyer characters, each conveying a different aspect of the profession, or a single character whose internal conflicts demonstrate incongruent elements. Rather than presenting a single, unified image of lawyers and the legal system, American fictional legal narratives presents a wide array of conflicting images. Yet, in the majority of these narratives, whatever the overarching view of the legal system as a whole that is expressed, the individual manages to triumph. In this chapter, I examine the representation of the figure of the lawyer in legal theory before

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3 The contemporary American lawyer has been variously identified as heroic (Grant), anti-heroic (Cossman) and villainous (Asimow, “Embodiment of Evil”).

4 However, certain narratives resist concluding with the success of an individual, such as A Frolic of His Own (see discussion below).
turning to the range of representations of lawyers in fiction, beginning with the lawyer as an anthropomorphization of justice (as a “virtuous defender” and hero), and ending with the lawyer as an anthropomorphization of injustice.

The Figure of the Lawyer in Contemporary American Legal Theory

Some scholars, including Lenz, claim that fiction examines concepts that have been traditionally overlooked in legal theory: “More recently, however, legal scholars have been more interested in using ‘imaginative literature’ to explore general philosophical concepts that are not in the mainstream of orthodox jurisprudential analysis (Posner 1998, xiii).” Concepts such as natural law, revenge, and justice do not have a prominent place in mainstream theories of judicial decision making because American law is greatly influenced by legal positivism, which emphasizes written law and reason” (Lenz 10). However, as noted in Chapter 1, even Hart, a staunch legal positivist, insisted on the importance of submitting written law and reason to moral scrutiny. Further, while American law is greatly influenced by legal positivism, there have also been influential trends in contemporary legal theory that have questioned the emphasis on written law and reason. While such concepts may not be the subject of “orthodox jurisprudential analysis,” some of these concepts have been considered in other movements in jurisprudence. Rather than contrasting fiction to legal theory on a wholesale basis, I would argue that certain fictional legal narratives have taken concepts and criticisms from contemporary American legal theory, but have expressed these ideas on a different level of representation – on the individual rather than the abstract level. Further, many

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5 Lenz is citing Posner here in support of this assertion, without mentioning Posner’s repeated warning that there is a definite limit to what imaginative literature can offer to the understanding of jurisprudence. Posner’s insistence on procedural accuracy is discussed later in this chapter.

6 Posner’s insistence that considerations of natural law are not a part of “orthodox jurisprudential analysis” reflects his position as a legal positivist.
fictional legal narratives also insist on the importance of the relationship between law, morality and justice, although this relationship is expressed differently than in legal theory.

Much contemporary thinking about law – both in legal theory and in fiction – owes a large debt to legal realism, a movement that arose in the 1930s and 1940s. Legal realism is hard to define, as Neil Duxbury explains in Patterns of American Jurisprudence: “American legal realism is one of the great paradoxes of modern jurisprudence. No other jurisprudential tendency of the twentieth century has exerted such a powerful influence on legal thinking while remaining so ambiguous, unsettled and undefined” (65). Legal realism introduced the concept that the actual outcomes produced by judges resulted from political and social influences, in essence asserting that “law in action” was vastly different from “law on the books.” The movement identified the subjectivity of the act of judging by a judge or jury. Further, legal realism declared “war on all absolute values (such as ‘justice’)” (Wacks 176). My point is not to delve into the various approaches and definitions of the movement, but simply to draw attention to legal realism’s recognition of law as a subjective process, and a human construction with all the fallibilities of human reasoning. This concept is often implicit in contemporary American fictional legal narratives.

Legal realism influenced Critical Legal Studies (CLS), a movement in legal theory that, as we have seen, took root in the 1970s, in the wake of the civil rights movement. Like legal realism, CLS is a complex movement and difficult to describe.

7 Legal theorist Neil Duxbury prefers, as we have seen, to identify legal realism as a “mood” or “pattern” rather than a “movement,” claiming that it is too elusive a concept to warrant the latter term.  
8 There is a distinction between American and Scandinavian legal realism. The followers of the former have been described as “rule-skeptics,” while those of the latter are “metaphysics-skeptics,” who “launch a philosophical assault on the metaphysical foundations of law” (Wacks 173).
James Boyle claims: “There is no single, monolithic CLS analysis of legal doctrine. At best, there is a heterodox collection of theories whose similarities outweigh their differences” (xiv). However, Boyle identifies two major themes in the movement. First, he cites the problematic of whether a judge’s interpretation of the law can “avoid the imposition of (subjective and therefore arbitrary) preferences” (xiv). Second, Boyle notes the influence of legal realism on CLS writing.\textsuperscript{9} Chase links the law and culture movement with CLS, describing the latter in the following terms: “The central claim of this theoretical analysis of legal institutions is that law constitutes a sophisticated ideological structure which has the function of legitimating an inequitable distribution of wealth and power in society” (Chase, “Toward a Legal Theory of Popular Culture” 542).

Chase argues that in order to properly examine this claim, law-as-ideology scholars need to examine popular culture’s reflection of social values. Yet, fictional legal narratives are not simply a subject for the analysis of CLS; they also reflect views developed in CLS (as mentioned in Chapter 1). The interest in the inequitable distribution of wealth and power has also been the main subject of many fictional legal narratives. Again, my interest in this chapter is not to determine the veracity of the claims made by CLS scholars. CLS remains relevant inasmuch as its views continue to influence (or at the very least, coincide with) dominant images of American lawyers, for example in the negative portrayal of the law firm in Grisham’s \textit{The Firm}, and in the negative images of the legal system as a whole in Wolfe’s \textit{Bonfire of the Vanities} and Gaddis’s \textit{A Frolic of His Own}.

\textsuperscript{9} Another scholar identifies major trends in CLS in a slightly different way: “Much early CLS writing concentrated on the social dimensions of legal history, and the relativist critique of liberal legalism emerged from the these essentially empirical studies. There is also a pervasive interest in the politics of legal education...” (Ward, \textit{Introduction to Critical Legal Studies} 145).

However, Duxbury claims that CLS peaked in the mid-1980s and has now receded in importance: “While development in postmodern, pragmatist and feminist jurisprudence and critical race theory are certainly not unrelated to the general critical legal initiative, they possess sufficient independence and self-identity to suggest that the time for critical legal studies has passed” (426).
Taking Peter Gabel and Paul Harris’ article, “Building Power and Breaking Images: Critical Legal Theory and The Practice of Law,” as an example of CLS theory, some similarities and differences between legal theory and fiction emerge. The article offers a view of liberal legalism characteristic of CLS:

First, all forms of serious social conflict are channeled into public settings that are heavily laden with ritual and authoritarian symbolism. Supporting this tableau of authoritarian symbols is legal reasoning itself, an ideological form of thought whose distinctive legitimizing characteristic is that it presupposes both the existence of and the legitimacy of existing hierarchical institutions. In a genuinely humane social order, the law would express provisional forms of moral consensus about all aspects of social life, arrived at through a genuinely participatory process. In our current system, such discussion is foreclosed by virtue of the abstract or removed character of the political process. Instead, the legality of the hierarchy is frozen in ahistorical rules which assume that the social relations expressed through the existing institutions of property, contract, and the modern corporation are extensions of human freedom.

While both fictional legal narratives and Critical Legal Studies identify problems with class struggles and race issues, each type of discourse identifies different figures as responsible for social inequities. While CLS frequently censures legal institutions and the ideological structure, fictional legal narratives often lay the blame on individuals or specific law firms. Yet, both fiction and legal theory seem to call for the necessity of moral judgment in the application of law, in order to avoid such inequities.

Gabel and Harris clearly identify the hierarchical power structures of the American court system as the driving force in disempowering the poor. The authors pinpoint the courtroom as the central image of political authority, and the judge as the figure in control of the courtroom (399):

If one looks at the institutions of the legal system from a power-oriented rather than a rights-oriented perspective, the very nature of these institutions takes on a different appearance from that portrayed in the
conventional model. Instead of seeing the judiciary, for example, as an integrated hierarchy of trial and appellate courts organized for the purpose of establishing the proper scope of procedural and substantive rights, one sees diverse locuses of state power that are organized for the purpose of maintaining alienation and powerlessness. In this perspective the lower state courts, for example, are designed primarily to provide administrative control over the minor disturbances of everyday life in local communities in order to maintain social order at the local level. (377)

This is an extraordinarily dark view of legal institutions – even darker than the view espoused by the majority of the fictional legal narratives discussed in this chapter. In works like Tom Wolfe’s *The Bonfire of the Vanities* and William Gaddis’ *A Frolic of His Own*, alienation and powerlessness may result from the legal system’s institutions. However, they are not seen as orchestrated for the purpose of maintaining alienation and powerlessness.

In contrast to their negative view of legal institutions, the lawyer emerges from Gabel and Harris’ perspective as a potential figure for reformative action. In legal theory, the figure of the lawyer is not often discussed on an individual level. Gabel and Harris, unlike many other legal theorists, do offer advice on the individual level. Their article offers radical lawyers tips on how to “use the legal system to increase people’s sense of personal and political power” (376). However, even in considering individual cases, such as the “Chicago Eight trial,”¹⁰ Gabel and Harris do not focus on the individual figures of the lawyers involved, although they refer to individual lawyers as examples. Instead, the authors praise the defense lawyers in the case for recognizing the prosecutor’s strategy as an exercise of state power: “The prosecutor’s real purpose was to channel the political struggle in the streets into an official chamber, to recharacterize the protestors as

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¹⁰ In the case of *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972), *cert. denied*, 410 U.S. 970, the prosecutor framed the case as hinging on whether the defendants had formed a conspiracy to “cross state lines with the intent to incite a riot” in organizing anti-Vietnam war demonstrations outside the Democratic National Convention (Gabel and Harris 380).
hooligans, and to substitute a narrow and depoliticized legal description of the meaning of the Chicago events for their true meaning” (380). The article commends the defense lawyers for “ridiculing the judge, the prosecutor, and the nature of the charges themselves” and thus rejecting the authority of the court and the war itself (380). The authors review a number of other individual cases, in each instance highlighting strategies that radical lawyers developed in aiding socially alienated clients. The general tone of the article suggests that lawyers have great potential to help in holistic ways that tie legal issues to more general community building. Lawyers are encouraged to find ways to break through the rituals of the court and “eroding the symbolic power of the State’s power from the bottom up” (399). Rather than envisioning lawyers as part of the problem, Gabel and Harris envision them as part of the solution.

Unlike CLS, few fictional legal narratives identify the State or hierarchical power structures as the central force behind the problems with legal system. The critique of the “law” occurs on an institutional and theoretical level in CLS, but mostly on an individual level in fictional legal narratives. In fictional narratives, the figure of the lawyer is often used as a contrast with either the relative moral emptiness of a collective legal institution, such as an evil-doing law firm or government agency, and/or the positive law itself as morally empty. However, while some fictional legal narratives engage intimately with legal theory, at the heart of all of these stories, human motivations are at the bottom of most of the problems with the “law.” Further, fictional villains – whether they be racist jury members, scheming mistresses or mob lawyers – are far easier for the individual protagonist to deal with than finding solutions for abstract problems.

11 An exception is David Hare’s Murmuring Judges, a British play discussed in Chapter 4, which does exactly this.
There may also be deeper and more important ways in which fictional villains symbolize larger issues, such as an imbalance of power held by large law firms or institutions, or the racism inherent in a town or community. A-historical legal rules and a fundamentally flawed social order take much longer to change, providing for fewer dramatic opportunities and fewer chances for emotionally satisfying conclusions. While many of these narratives do critique the social order, at the base of the protagonists’ problems with the legal system is often simple human greed. The immediacy of conflict on a concrete, individual level is easier to relate to than conflict on an abstract level.

The Lawyer as “Virtuous Defender”

One of the most iconic figures in the history of American legal culture is Atticus Finch, protagonist of Harper Lee’s novel, *To Kill A Mockingbird* (1960; film adaptation 1962). The novel is narrated by a young girl, Scout Finch. Scout and her brother, Jem observe their father, Atticus, a small-town lawyer who defends a poor, black man, Tom Robinson, who is wrongfully accused of the rape of a white woman, Mayella Ewell.\(^\text{12}\) Atticus’s struggle occurs not only in the courthouse, but also in the wider community, as he and his family face censure from the townspeople of Maycomb. To many, Atticus embodies the “virtuous defender,” and demonstrates the heroic possibilities of the legal profession. Both the novel and the film had a strong impact on popular images of lawyers, and were honoured with prestigious awards, respectively winning the Pulitzer Prize and three Oscars.

After almost half a decade, the character of Atticus Finch is still relevant to the conception of real and fictional lawyers alike. The character has been a topic of recent

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\(^{12}\) While it is generally accepted that Tom Robinson is wrongfully accused, Steven Lubet’s article, “Reconstructing Atticus Finch,” questions this. Lubet introduces the possibility that Tom might have been guilty, and suggests the consequences of Atticus’ defense in those circumstances.
scholarly attention in the contexts of both legal ethics and law and literature, where he has garnered both lavish praise and harsh criticism. One critic wrote: “No real-life lawyer has done more for the self-image or public perception of the legal profession than the hero of Harper Lee’s novel…” (Lubet 1339; see also Owens 1440). Along the same line, an anonymous critic in the Harvard Law Review believes that Atticus exemplifies “the zealous advocate of his or her client’s interests, regardless of the moral outcome or impact on others” (“Being Atticus Finch: The Role of Professional Empathy in To Kill A Mockingbird” 1682). However, recently, scholars have begun to question the heroic picture of Atticus, and have reexamined his character through a more critical lens.\textsuperscript{13} These views have provoked still other scholars to respond in defense of the positive view of the character.

To Kill a Mockingbird has been cited as an early example of the “virtuous defender” image that may have resulted from the political mood of its time:

It would be pure speculation to suggest that this development of the virtuous-lawyer image in the late 1950s and early 1960s was directly related to the decline of McCarthyism and a gradually maturing realization that individual rights in America had been savagely abused during the long period of anti-Communism and witch hunting. Nevertheless, “canonizing” an image of a responsible yet “tough as nails” individualist attorney ready to go to the wall for his (but not her?) unpopular client might make sense both as a reaction against what McCarthyism’s supporters had been allowed to get away with as well, perhaps, shared national denial by Americans ashamed of the way civil liberty had recently been sold out. (Chase, “Lawyers and Popular Culture” 285)

Although he couches it as “pure speculation,” it is clear that Chase believes that representations of lawyers are directly influenced by politics. However, the novel also bears traces of the prevailing legal theories of the time. Atticus has been also been linked with concepts of natural law, in that he views law as inherently linked with morality. It is

\textsuperscript{13} See, e.g., Lubet and Atkinson.
important to note that the novel was published in 1960, two years after the famous Hart-Fuller debate was published in the *Harvard Law Review*.\(^\text{14}\)

Atticus’s approach to the practice of law aligns with natural law principles, as he is constantly guided by his sense of morality. His quiet commitment to his own conscience represents an opportunity for change on an individual level not often envisioned by legal theory, but that has caused John Jay Osborn and others\(^\text{15}\) to praise Atticus as a model for modern legal ethics. Knowing from the beginning that he is going to lose Tom Robinson’s case, Atticus takes it anyway, telling his daughter, “Scout, simply by the nature of the work, every lawyer gets at least one case in his lifetime that affects him personally. This one’s mine, I guess” (76). Atticus’s morality is also linked directly to his belief in God: “This case, Tom Robinson’s case, is something that goes to the essence of a man’s conscience – Scout, I couldn’t go to church and worship God if I didn’t try to help that man” (104).

Atticus believes that the legal system will deliver a just result in the long run. However, there is a distinction in his understanding of law at the local level and law at the national level. At the local level, law as represented by the jury clearly shows a disconnect between law and morality (although they are acting from a morality, it is clearly a flawed morality). *Mockingbird* demonstrates the failure of the jury members to act as neutral arbiters because of their inherent racism. Atticus’s lack of faith in the jury is evident from his comments to his brother: “It couldn’t be worse, Jack. The only thing we’ve got is a black man’s word against the Ewells’. The evidence boils down to you did

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14 Hart’s expounded positive law theory in “Positivism and the Separation of Law and Morality” (1958); Fuller replied with natural law views in “Positivism and Fidelity to Law — A Reply to Professor Hart” (1958).
15 See, e.g., Althouse and Asimow (“When Lawyers Were Heroes”).
– I didn’t. The jury couldn’t possibly be expected to take Tom Robinson’s word against the Ewells’…” (88). Scout’s description of the trial, however, does not indicate that the individual personalities of the judge or jury members affect the process – the jury’s decision is a product of the collective beliefs held in Maycomb.

The case plays out as Atticus predicts: Tom Robinson is unable to get a just verdict from the all-white jury. In his closing statement, Atticus displays a schizophrenic view of the law:

But there is one way in this country in which all men are created equal – there is one human institution that makes a pauper the equal of a Rockerfeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution, gentlemen, is a court. It can be the Supreme Court of the United States or the humblest J.P. court in the land, or this honorable court which you serve. Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal.

I’m no idealist to believe firmly in the integrity of our courts and in the jury system – that is no ideal to me, it is a living, working reality. Gentlemen, a court is no better than each man of you sitting before me on this jury, and a jury is only as sound as the men who make it up. (203)

First, Atticus identifies the court system as a fair system, and indicates his faith in the legal system. Yet, he also hints at a legal realist view in his acknowledgment of the jury as vulnerable to human fallibilities. In this view, “law is not an autonomous system of rules and procedures but, as the Legal Realists saw it, a complex system of social interactions ultimately inseparable from society” (Atkinson 705). Still, Atticus does believe that he has a good chance of winning on appeal. However, his efforts prove to be in vain, as Tom is convicted and then shot by prison guards while trying to escape. Law should lead to justice, but (at least at the local level) it fails to do so, and Atticus’s hopes of success on appeal are thwarted.
However, while the case does not go well, Atticus’s morality sets an example for his children. Beyond the arena of the courthouse, Atticus is an exemplar of moral probity at home. A large portion of the novel focuses on Scout and Jem’s childhood adventures before the trial. The use of a child’s point of view signals that, despite the importance of the outcome of the trial, the education of Atticus’s children is also at stake. Atticus is a benevolent force in the background of the children’s world. He is patient as a father, gently explaining good behaviour through reference to the law, as is clear from his remarks to Scout: “Sometimes it’s better to bend the law a little in special cases. In your case, the law remains rigid. So to school you must go” (30). When Atticus catches Jem ringing the Radleys’ doorbell, he chastises his son by saying: “You want to be a lawyer, don’t you?” (49). Atticus’ concept of what it means to be a lawyer is clearly positive, and includes high moral standards of behaviour (standards that extend far beyond what is required by the boundaries of legality). Although Atticus may have failed to bring Tom Robinson’s case to justice, his morals have been passed on to his children.

In the Finch home, law as a principle and system of rules is tied to the “civilizing” force of literacy. Scout reveals that she has learned to read from absorbing Atticus’s reading materials, including “Bills to be converted into laws” (18). Calpurnia, the Finchs’ black housekeeper, has also learned to read, and has taught her son to read from Blackstone’s Commentaries on the Laws of England. She tells Scout: “Your granddaddy said Mr. Blackstone wrote fine English – ” (125). Certainly, it is no coincidence that Blackstone’s Commentaries is a source that has been described as “the high-water mark of natural law” in England (Wacks 19). The printed sources of the law are held in reverence in the Finch household, and are connected with the power and superiority of
reading – both of Scout’s superior reading skills in comparison to her schoolmates, and of Calpurnia and Zeebo’s ability to read (they are two of only four literate people of the hundred members of their church).

Nevertheless, recently some critics have questioned Atticus’s status as an exemplar of morality in the legal profession. For example, although Osborn sees Atticus as a proponent of natural law values, he also describes the character as “a man standing up for traditional values to the point of insanity. The film [and the novel ask] the difficult question: At what point does belief in traditional natural law values become absurd?” (1140). This is quite a different interpretation of the character than usual picture of the hero. Osborn continues: “Atticus cannot see beyond his law books. Indeed, he seems scared to do so, as if it would unleash the real demons in the town. He plays along with the system. Atticus is a willing participant in a ritual that he knows to be absurd” (1141). Rather than seeing Atticus as a figure that embodies justice, Osborn interprets *Mockingbird* as “the first great film of the Sixties that makes a convincing case that a new kind of lawyer is needed, one who will fight to eliminate the ‘system’ rather than participate in it” (1142).

Osborn does not explain Atticus’s tendencies toward natural law in detail, but he identifies Bob Ewell, Mayella’s father, as the main force acting against Atticus. In Osborn’s eyes, Ewell represents positive law values: “The evil father desires to protect his family’s position in society, and is willing to do so by any means possible, including killing innocent children” (1140). While Osborn does not discuss Ewell’s attitude toward the trial, his reference to Ewell as a positivist implies that Ewell also sees the trial as a transaction not necessarily linked to morality, and as a means to an end. Yet, I would
argue that Osborn’s view of Ewell does not take into account Ewell’s vigilantism.\textsuperscript{16} While the law produces the results he desires with respect to Tom Robinson’s guilty verdict, the legal process also helps to discredit Ewell in court, and to create a hero out of Atticus. At this point, Ewell takes matters into his own hands (quite literally) when he attacks Gem and Scout. In my view, while it is possible to interpret Ewell as a representative of positive law values, the predominant image he represents is that of a vigilante. Ultimately, the law offers him no remedy for his hatred of Atticus, so he resorts to extralegal means. Ewell is at heart an immoral person who is able to use the legal system for immoral means in one instance, but is also willing to use vigilant justice in order to seek vengeance against Atticus.

Another critic, Rob Atkinson, doubts the power of a story about a white man as a model of heroism. Atkinson suggests replacing \textit{Mockingbird} with Faulkner’s \textit{Intruder in the Dust} as a model: “A story about a black man saving himself with the help of an elderly white woman,” rather than a “story about a white man saving a helpless black man” (715). Morality is not even a sufficient criterion for change in Atkinson’s eyes. Both Atkinson and Osborn’s views bear the influence of CLS in terms of their skepticism of the orthodox interpretation of the legal system and the lawyer’s role in it. Osborn’s view of the legal system as an oppressive institution that needs to be ‘eliminated,’ and Atkinson’s analysis of the politics of race are both approaches that find their bases in CLS. What was once considered heroic is now considered by these critics to be insufficiently radical (in Osborn’s view), or paternalistic and condescending (in Atkinson’s view). While some critics argue that the lawyer-as-hero archetype has

\textsuperscript{16} Ewell’s vigilantism is shared by the rest of Maycomb, as described by Osborn: “In short, this is a place where the rule of law does not exist, where murder is tolerated by the authorities, where racism is brutal and rampant, and where the jury system is a mockery” (1141).
become less prevalent,\textsuperscript{17} scholars have apparently also changed the criteria for heroism in the legal profession, as is inevitable, perhaps, with changing social and political climates.

Despite the inability of critics to agree on whether Atticus is a good model for ethical practice, evidently \textit{To Kill A Mockingbird} still offers a fresh site for understanding both the past and present ideals of the legal profession. The character of Atticus has had a tremendous influence on the conception of American lawyers.\textsuperscript{18}

Television series are the main inheritors of the “virtuous defender” ideal, some of which include: \textit{Night Court} (1984-1992), \textit{Matlock} (1986-1992), \textit{L.A. Law} (1986-1994), \textit{Law and Order} (1990-present), \textit{Ally McBeal} (1997-2002), \textit{The Practice} (1997-2004), \textit{Boston Legal} (2004-present), and \textit{Damages} (2007-present). Current novels and movies present more negative representations of lawyers and the legal system (see Asmiow, “Embodiment of Evil”), sometimes with conflicting representations of lawyers in a single work. Contemporary television continues to show images of lawyers as heroes in the “Atticus” vein – diversifying from the vision of the lone, white, male lawyer character, to ensemble casts with female and minority characters (e.g., \textit{Ally McBeal}, \textit{The Practice}, \textit{Boston Legal}, etc.). These stories offer a different view of the profession than that suggested by CLS, which advocates the equalization of the lawyer-client relationship, as well as encourages the lawyer to question the nature of the legal system as a whole. While these strategies are sometimes employed, most of the storylines in legal television series show lawyers using reason to win cases within the context of a court system that generally rewards individual merit and telling the truth.

\textsuperscript{17} See, e.g., Chase (“When Lawyers Were Heroes”) and Grant.
\textsuperscript{18} Along with other roughly contemporaneous images, such as the character of Paul Biegler in Robert Traver’s \textit{Anatomy of a Murder} (1958; movie version 1959) and \textit{Perry Mason} (1957-1966).
Positive representation of lawyers on television sometime tends to trivialize serious issues and make light of the law. For example, the plotline of *Ally McBeal* relies heavily on soap-opera type romances and tends to trivialize the practice of law. Yet, there is no denying that the series was wildly popular, and reflects the reality that practitioners of the law are increasingly female, and also have personal and emotional concerns. Ally and her colleagues, at heart, carry on the “virtuous defender” archetype, and each episode confirms their morality and goodness. There is no major tension between law and justice. The legal system’s ability to produce justice is taken for granted, and judges are mostly sympathetic characters. Satire of legal genres perhaps reaches the peak of trivialization in the movies *Legally Blonde* (2001) and *Legally Blonde 2: Red, White and Blonde* (2003), and, unbelievably, a live Broadway adaptation, *Legally Blonde: The Musical* (2007).

**The Lawyer-Hero vs. the “Embodiment of Evil”**

Although John Grisham has been cited as an author who “consistently trashes law firms (both big and small)” (Asimow, “Embodiment of Evil” 1353), his novels counterpoint anthropomorphizations of “good” and “bad” against each other. While many of the law firms in his novels are portrayed as “embodiments of evil,” vestiges of the “virtuous defender” ideal survive in his lawyer protagonists. Due to the mass distribution of his novels and their film adaptations, Grisham’s representations of law and justice have been widely viewed by the public. Along with Scott Turow, Grisham

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19 Here, we may recall Friedman’s caution that popular culture representations of the law may be “filtered through a consciousness distorted by ignorance or bias” (1593), discussed earlier. Legal drama series also draw heavy criticism, even when not trivializing the law. Mary Jane Miller censures *L.A. Law* in comparison to the Canadian television series *Street Legal*. She suggests that *L.A. Law* consists of “formula-ridden mediocrity…set in yuppy anywhere with nice weather” (112).

20 John Grisham was the top-selling author of the 1990s, with over 60 million copies of his novels sold in that decade (Owens 1432), and a total of 110 million books sold throughout his literary career (White 173).
has been credited with resurrecting the legal thriller genre after its deterioration in the post-Perry Mason years, for these two authors infused the genre with “new legal possibilities” and updated it in the context of “the cynical, sensation-hungry nineties” (White 173). Grisham has been described as having “an innate cynicism toward the law’s chief practitioners as a set of scoundrels out to make money at the expense of ordinary, decent people” (White 173). His view of the legal system is one espoused by a large number of contemporary American fictional legal narratives, and serves as an example of the pervasive view of the legal system as corrupt and/or inefficient. Yet, many of Grisham’s nineteen novels centre on lawyer protagonists who are well meaning, even if they sometimes bend legal ethics in order to fight corruption.

Grisham’s highest grossing movie, The Firm, earned $270 million (White 173). It exemplifies the author’s cynicism toward the legal system, even stretching this cynicism into the realm of contempt. In The Firm, the young lawyer protagonist, Mitch McDeere, emerges as an Atticus-style hero set against the backdrop of a Mafia law firm. Upon graduating from Harvard law school, Mitch is recruited to work at a small but successful Memphis law firm, Bendini, Lambert & Locke. He soon discovers that the firm is a money-laundering outfit for the Italian Mafia. However, Bendini, Lambert & Locke is

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21 Perhaps the most extreme example of a negative view of the law firm can be found in the movie The Devil’s Advocate, where the managing partner of the firm turns out to be Satan. Corruption is also a theme in many of Scott Turow’s novels, including Presumed Innocent, in which Judge Larren Little and lawyer Caroline Polhemus are involved in corruption, while lawyer Rusty Sabitch provides the “good guy” contrast. The paradigm of the honest lawyer fighting against the evildoing conspiracies of law firms and corporations has been recently repeated in the 2008 film Michael Clayton. There, the film’s lawyer protagonist is forced into an ethical dilemma when he discovers a conspiracy headed by the in-house lawyer of a pesticide company that is his firm’s client. Ultimately, Clayton makes the morally correct decision and exposes the pesticide company’s environmental pollution.

not criminal on an egalitarian basis – the shape of its evil is the stuff of a CLS scholar’s worst nightmare. The firm recruits Mitch because he fits in with their demographics: all white, male, and married. This may be an exaggerated account of the race and gender inequities that exist in many of today’s law firms, but is rooted in an unfortunate reality.

Comments throughout the novel show a consciousness of some of CLS’s main criticisms of the discrepancies between the rich and the poor, and the corruptibility of the legal profession. At one point, Mitch says to his wife: “It’s a cutthroat business where the weak are eaten and the strong get rich” (97). An older lawyer’s advice to Mitch is that “[i]t’s supposed to be an honorable profession, but you’ll meet so many crooked lawyers you’ll want to quit and find an honest job” (69). This negative view of lawyers is in line with Peter Robson’s view of Grisham’s work:

Looking at the corpus of his work it is clear that increasingly John Grisham confronts John Cawelti’s hypothesis that formulaic fiction tends to reproduce cultural consensus as opposed to the way elite fiction confronts us with the problematic and contradictory nature of the world as it appears to us….Given the pervasiveness of Grisham not only in books but in films too the confidence which might have been engendered by LA Law is seriously undermined by the corpus of Grisham’s work. The rule of law may not be quite dead but is not in good health in this world. (218)

In The Firm, corruption is closely tied to the picture of the overworked, exhausted, but financially successful young lawyer. Grisham gives a detailed description of the hourly billing process in large firms. Working as a lawyer is portrayed as a gruelingly difficult, but well-remunerated life. The negative effects of the commercialization of the legal practice are stretched to the extreme here. Robson writes that in Grisham’s writing, “[p]ractice is portrayed as a home for compulsive personalities, as a cut-throat and competitive enterprise. It has nothing to do with justice but rather is a gravy train to luxury living” (213). In the case of The Firm, this is an understatement. Beyond being a
gravy train to luxury living, Bendini, Lambert & Locke represents the antithesis of justice – organized crime has infiltrated an organization whose ostensible purpose is to serve the public. Members of this firm actively flout their duties as officers of the court, to the end of actively participating in breaking the law.\textsuperscript{23}

Yet, the picture of the legal system in \textit{The Firm} is not one-dimensional. Contrasted to this picture of corrupt law firm is the individual figure of the lawyer. Mitch is an incarnation of the American dream: a lower-middle class kid who succeeds in coming in the top five of his class at Harvard law school. Like Atticus Finch, Mitch is answerable only to his own conscience, and refuses to be intimidated by higher authority in the form of either his employers or the FBI. Mitch’s triumph over the forces of evil is affected by reason, knowledge and ethical behaviour: “In the end, Mitch triumphs because of something he learned in studying for the bar exam. This information becomes key to Mitch’s primary directive, which is to guard attorney-client privilege and refuse to do anything illegal. In other words, Mitch has principles. Through scrupulous attention to the law and a naif’s belief in its righteousness, Mitch is able to conquer the chaos and corruption of the technologically rational\textsuperscript{24} cops, lawyers, and Mafia men whose only aspiration is to use the law to achieve their goals (no matter what those goals may be)” (Grant 1115). In both cases, clearly, Mitch is not part of the dysfunctionality of the legal

\textsuperscript{23} In the movie version, the law firm is not the only target of censure – the movie also vilifies the government. When FBI agents approach Mitch, telling him that his law firm is actually a front for the Mafia, a private investigator warns him, “I’ll tell you one thing, if those guys at the steak house were feds, you’d better watch out for ’em. ‘Cause they don’t give a damn about you.” One of the FBI agents proves this to be true, as he threatens Mitch: “I’m a federal agent. You know what that means, you low-life motherf***er. I could kick your teeth down your throat and yank ‘em out your ass and I’m not even violating your civil rights.” The same FBI agent in the novel is basically a benevolent character – although things do not always go according to his plans, he is not verbally abusive.

\textsuperscript{24} The use of the modifier “technologically rational” refers to the reliance of these groups on technology and rationality as their primary modes of processing information. At the beginning of her article, Grant writes: “The importance and popularity of superheroes coincide with the move away from simple industrial economies and the concomitant rise of techno-rational and post-industrial economies in the West” (1111).
system, but navigates through it using his own moral compass.²⁵ John Owens questions this compass, and writes, “I find Grisham’s compass to be completely off the mark, and the moral of his legal tales to be deeply troubling and wrong…” (1142). Owens disapproves of Grisham’s protagonists, who engage in “lying, stealing, breaching client confidences, and other immoral acts of which no bar association would approve” (1440). He compares these protagonists to Atticus Finch, finding the later to be infinitely preferable in moral terms. Mitch, Owens notes, steals files from his own firm in order to prove its involvement the Mafia (1439), a morally questionable tactic Atticus would likely never choose. However, given the discussion of both Mitch and Atticus as heroes, it is clear that morality is contingent upon social context – what is morally acceptable to one generation may not be accepted by the next or vice versa. It is possible that current readers and audiences are willing to overlook certain transgressions again morality that may be viewed as means to an honourable end. Nevertheless, both protagonists are portrayed as heroes, whether or not they are perceived as such by readers.

Differences between the novel and the movie demonstrate two converging visions of the ability of the legal system to deliver justice. In the novel, Mitch makes a six-hour videotape deposition for the FBI, in which he carefully details the firm’s money-laundering relationship with the Mafia. Rather than relying on the government’s witness protection program, Mitch, Abby and Ray escape on a boat in the Caribbean, but with the fear that the Mafia may one day track them down. In the movie version, Mitch refuses to break his solicitor-client confidentiality. Mitch tells Abby: “If we follow the law, it might just save us.” Instead of turning the Mafia family over to the FBI, Mitch gives the

²⁵ Further, not all lawyer protagonists in Grisham’s novels are ethical. Robson writes that: “They occupy different places on a continuum from squeaky clean legality through murky ambivalence towards the goals of the legal system, to simply illegality” (207).
government enough information to indict the firm on mail fraud, due to the overbilling of their clients. Mitch then goes to visit the Mafia, and makes a deal with them. Ray is sent off on a boat in the Caribbean, while Mitch and Abby recover their lives with no hint of the novel’s uneasy ending. They drive back to Boston to begin their lives again, and Mitch states his intention to become a sole practitioner. In the novel, Mitch must leave the practice of law and all hope of a normal life.

Thus, the two different versions offer vastly different messages about the legal system as a vehicle for justice. While in the movie, Mitch believes that the law “might just save us,” no such trust in the law’s ability to secure salvation is offered by the novel’s protagonist, who is ultimately left to his own devices to find safety. Rather than offering a one-dimensional view, each version of The Firm offers a multi-layered view of the legal system, which become even more complex when considering the conflicting messages created by the narrative’s adaptation from page to screen. This complexity is surprising, given the ostensibly formulaic format of both the novel and the movie, but it is an important consideration given the impact this narrative has had on the popular conception of the lawyer.

The Lawyer and the Moral Practice of Law

Louis Auchincloss’ The Diary of a Yuppie (1986) reveals a very different picture of the lawyer as protagonist. The novel’s main character, Robert Service, is a 32-year old associate in a large New York City law firm, and the first-person narrator of the title’s fictional diary. Robert is cut from very different cloth than that of the “virtuous defender.” Rather than focusing on a particular client or case, as in a courtroom drama, Robert’s main dilemma is the business side of legal practice. He is primarily driven by
profit, to the detriment of morality, although not to the same degree of immorality and criminality that other fictional lawyers manage to achieve.\textsuperscript{26} Robert is on the partnership track,\textsuperscript{27} and lives in an expensive Manhattan apartment with his two young daughters and his “perfect wife,” Alice. After eight years of practicing law, on the eve of his promotion to partnership at the firm, Robert becomes disenchanted with his law firm because he feels that the demographic amongst the partners means that, as a junior partner, he will have to wait another decade to participate meaningfully in the firm’s management. Robert’s solution to this problem is to leave the firm, taking with him a number of the key associates in order to set up his own firm.

The tension between profit and morality in the practice of law is a central theme in the novel. Although it was published and is set in the 1980s, the novel’s moral framework seems to be a throwback to an earlier time. Robert’s world is somewhat antiquated, and it often seems as though his “diary” reflects the attitudes and reactions of the book’s nearly 70-year-old author\textsuperscript{28} to a rapidly changing profession, rather than the thoughts of the 32-year-old protagonist, who would have come of age as a lawyer in the competitive, materialistic atmosphere of the 1980s. As in many other fictional legal narratives, there is no mention of law as an abstract concept, and no discussion of legal principles beyond a vague awareness of illegality. “Law” in the novel more often refers

\textsuperscript{26} E.g., in comparison with works like \textit{The Firm} or the movie \textit{The Devil’s Advocate}.

\textsuperscript{27} Lawyers typically begin as salaried associates at large law firms and strive to “make partner” after working between six to ten years, at which point they may be admitted into the ownership of the firm, and as such are entitled to a portion of the firm’s profits. The Americans conceived of the paradigm of the large law firm, which is now a conventional international model (although it is a much more established model in Canada and the UK, than in countries like France and Germany which have been slower to adopt it).

\textsuperscript{28} Auchincloss began to publish in the 1950s and was nearly 70 when this novel was published. He had already written other novels and short stories focusing on the subject of New York City lawyers, and it has been said that “most of them hinge upon the imperatives of private morality in a world where social morality no longer, apparently, exists” (Tuttleton 618). Adherence to private morality, while perhaps outdated, nonetheless yields happy results for the characters of \textit{Diary of a Yuppie}.\textsuperscript{29}
to the practical side of the legal profession, and is seen as a game by many of the lawyers. Here, the lawyers do not seem to take concepts of justice into consideration in the practice of law. Indeed, little, if any, reference is made to even the idea of justice.

Robert writes of his boss, Branders Blakelock: “I don’t think he really likes it when he has to fool not so much other people as himself. For that is what men toting a bag of puritan principles must do when they practice law. Hoyt, Welles & Andrew, like most of the old-time corporate law firms, had at first disdained takeovers as dogfights to be left to less reputable practitioners, but when takeovers became the principal indoor sort of American finance they had no choice but to learn the game or lose their clients” (16).

Here, a sense of nostalgia emerges for the practice of law as a “gentleman’s profession,” which the characters appear to feel has been eroded by the commercial concerns of today’s legal practice. While this attitude most likely existed significantly before the writing of this novel, Auchincloss’s characters express the anxieties of an older generation reacting to the transition from the earlier law firm to its contemporary form.

Alice, Robert’s wife, acts as a moral gatekeeper, censuring him for his behaviour. She, too, picks up on the metaphor of the game, but clearly disapproves of it more than Robert: “The trouble with you and Blakelock is that neither of you has the remotest understanding of the moral climate in which we live today. It’s all a game, but a game with very strict rules. You have to stay meticulously within the law; the least misstep, if caught, involves an instant penalty. But there is no particular moral opprobrium in

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29 Despite the fact that female lawyers were already a clear presence in 1986, when the novel was published, lawyers in *The Diary of a Yuppie* are exclusively male. Another character remarks: “I simply don’t want to practice law with the sort of men who make up Arnheim & Buttrick” (162). While John Grisham’s *The Firm* (1991) also features an all-male law firm, the lack of women there is purposeful, and adds to the eerie nature of that particular firm. Here, the lack of reference to female lawyers is also somewhat eerie, but not purposefully so.
incurring a penalty, and more than there is being offside in football…You break the rules, pay the penalty and go back to the game” (26-27). Upon hearing of Robert’s plans to build his own firm, his wife, Alice, leaves him, citing his lack of morals as the reason for her abandonment. Her reaction to Robert’s professional ambitions is unequivocal: “I’ve had a growing suspicion that you are not the man I thought you were…now I must learn to see you as a man who is willing to plot in secret to dismember the law firm of his loving and trusted benefactor” (62). In a contemporary context, the formation of a new law firm from the members of a more established firm does not register as the egregious breach of morality that Alice sees it as. Such behaviour, in the twenty-first century, has become commonplace. Yet, while placed in morally delicate situations, Robert never sinks into serious moral depravity or even the kind of dangerous levels of temptation found in other fictional legal narratives. Alice’s moral outlook has a subtlety that seems to have been inherited from Auchincloss’s literary influences – he has been linked to Henry James (see, e.g., Tuttleton) and described as “the spiritual descendant of Edith Wharton” (Long 17). However, the subtlety of moral considerations from an earlier age once again seems incongruous with the harsher realities of legal practice in the 1980s.

In the novel, Robert’s morality continues to be measured according to these now antiquated moral standards. After separating from Alice, he begins dating divorced

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30 Given the high turnover rates among associates at large firms, the flexible career mobility of lawyers, and the relative speed at which law firms are created and collapsed, the concept of loyalty to one’s boss or firm seems outdated today.
31 Auchincloss published critical studies of both these authors, including his Edith Wharton (1961), and Reading Henry James (1975). He also makes a passing reference to Henry James on the first page of The Diary of a Yuppie.
32 Morally depraved lawyers are not limited to the contemporary narratives. For instance, Dickens’ Bleak House offers a biting criticism of a corrupt legal profession, with an edge that is thoroughly lacking in Auchincloss’ work. This is not to say that every fictional legal narrative must portray lawyers sinking to the absolute depths of corruption; there are clearly contrasting degrees of immoral behaviour found in different works.
public relations expert Sylvia Sands. Robert’s parents disapprove because Robert is
dating Sylvia while still technically married to Alice. It becomes clear that Sylvia is too
morally questionable even for Robert – she is scheming to convince an elderly socialite,
Ethelinda Low, to set up a charitable trust in which Sylvia is named as a trustee (from
which position Sylvia will benefit financially). In the hopes that Robert will marry her,
Sylvia facilitates a merger between Robert’s law firm and that of Ethelinda’s lawyer, Gil
Arnup. Robert thwarts Sylvia’s plan by advising the socialite to set up a foundation
rather than a trust. Again, Sylvia’s unethical plans seem positively tame in comparison to
the extremes of corrupt and even demonic activities that take place in other fictional legal
narratives. For example, in The Bonfire of the Vanities, protagonist Sherman McCoy
conducts a full-blown affair with socialite Maria Ruskin. (I will discuss the
consequences of this affair shortly.) No one except for McCoy’s wife seems in the least
put out by McCoy’s infidelity, and it is the least of his worries over the course of the
novel. The movie The Devil’s Advocate goes a step further. There, the managing
partner of the firm is literally the devil, and he uses rape and murder as a means to
achieve world domination. Sylvia’s schemes seem relatively mild in comparison.

Yet, while Sylvia fails to sink to the depths of other villains in fictional legal
narratives, Robert fails to reach the heights of other fictional lawyer heroes. His vision of
“moral success” is much more practical than the lofty moral aspirations of the “virtuous
defender” archetype:

I was resolved that it would be a union of highly trained, competent men
and women who would do everything for a client that could be lawfully
done…. And what would that expertise be used for? Well, first and
foremost, for the clients – for the skillful handling of their interests within
the last letter of the law, but never a millimeter beyond. Nor would the
client ever be subjected to the smallest piece of moral advice or guidance;
all such matters would be strictly the client’s affair. My firm would be a
sharp cutting weapon to be picked up and used; weapons did not preach,
but they had to be paid for. On the other hand, when we operated in the
public arena – and I was willing to commit us to a substantial number of
hours a week for *pro bono* work – then we would show an equal zeal and
an equal ruthlessness. (80-1)

While his concept of the law firm is ethical in that it conforms to the minimum
requirements of any given bar association or law society’s guidelines for professional
conduct, Robert stops short of expressing a desire to actually help people through his
legal practice. His comments about *pro bono* work seem almost to be an afterthought.
The novel never actually describes him performing legal work for needy clients; in fact,
he himself never mentions the subject again.

Nor does Robert consider the concept of justice when founding his ideal law firm
– it is a concept that simply does not occur to the novel’s characters. Even Alice’s views
on morality appear to be limited to interactions within a certain context and class
structure; her morality is not aimed at promoting social justice amongst other classes, the
wider community or the world in general. In other words, Alice’s concept of “morality”
does not appear to extend beyond her desire for Robert to refrain from questionable
activities such as tearing apart his former law firm or scheming to gain control over old
ladies’ trust funds. Alice does not, for example, press Robert to use his legal skills in
order to aid the less fortunate, as Atticus Finch does in defense of Tom Robinson.

However, in contrast to the lack of morality in the legal profession, morality is
explicitly allied with the literary throughout the novel. Auchincloss’s alliance of
literature and morality would win the approval of scholars like James Boyd White, Robin
West and Richard Weisberg, with their faith in the moralizing influence of literature on
the legal practice. Robert Service is himself a former English major. Alice is a literary
agent and the daughter of a freelance writer, Jock Norton, whose life path provides another point of moral reference for Robert. Jock’s mediocre career as a writer is equated with success in Robert’s diary:

He was a free-lance writer who always believed – according to Alice, for he was too much of a gentleman to say it – that, had he not saddled himself with a wife and child and an expensive house in the suburbs, he might have been a first-class novelist. What he never realized was that his genius was precisely for the kinds of pieces that he did write: brilliant short stories, witty satirical poetry, devastating movie reviews, which brought him a modest but regular income. He was better off, I am sure, lamenting a career as a major writer of fiction than facing its failure. (34)

Meanwhile, Robert’s own father, Jake, has had a mediocre but purportedly happy career as a lawyer, but ends up taking the brunt of Robert’s criticism: “Fatuity, on the other hand, was the keynote of my father’s life” (34). Despite the fact that both men earn middle-class incomes, with houses in the same expensive suburban neighbourhood, Robert nevertheless reveres Jock’s choice to earn his living as a writer. The “free-lance” aspect of Jock’s work rings of freedom and garners Robert’s praise, while Jake, a perpetual associate since “he failed to make partner thirty or more years ago” (34), only attracts Robert’s derision.

Robert’s high school English teacher, Mr. Hawkins, reiterates the perceived divide between the literary and the legal professions. In Mr. Hawkins’ estimation, poetry is seen as both spiritual and ethical, in contrast with the law. Hawkins goes as far as to state his disbelief that Robert could ever be satisfied with a career in law, because of Robert’s literary acuity: “Lots of people are utterly content with the rewards of this world. But you have been vouchsafed a vision of better things. You have loved Wordsworth and Hopkins. You knew long passages of The Prelude by heart. How were you ever going to be satisfied in a shallow pond?” (193). In Hawkins’ estimation,
Robert’s “real love of beauty and real love of success” (194) are incompatible. His suggestion is that Robert should return to Alice, who “at least shares your literary tastes” (194). The novel ends with Robert and Alice’s reconciliation, and the merger of his law firm with Arnup’s. Thus, Robert does manage to find happiness in the “shallow pond” of material success, but only when reunited with his wife’s apparently civilizing literary and moral influence. Yet, while not the “virtuous defender” of an Atticus Finch, Robert is hardly a villain at any point – even the worst possible moral decisions would not have sunk him (or Sylvia, for that matter) to the depths of criminality envisioned in other fictional legal narratives. Robert represents yet another facet of the image of the American lawyer, and Auchincloss’s novel shows a more realistic side of modern legal practice than the heroic images of Atticus Finch and Mitch McDeere.

**Lawyers as Anthropomorphizations of Injustice**

In contrast to narratives that feature lawyers as protagonists, some fictional legal narratives that centre on a defendant or a litigant tend to show lawyers as anthropomorphizations of injustice, and part of a legal system that is abusive and irredeemably negative. Although far from echoing the subtle machinations in *The Diary of a Yippie*, Tom Wolfe’s more virulent *The Bonfire of the Vanities* (1987; movie adaptation 1990) is also set in New York City, and was published only a year later. However, Auchincloss and Wolfe’s representations of “law” in mid-1980s New York City seem like they could be worlds apart. In contrast to Robert Service’s well-mannered world, in which poaching lawyers from one’s old law firm constitutes an egregious moral transgression, in Wolfe’s vision, lawyers and journalists think nothing of sending a man to prison and financial ruin in the hopes of furthering their own success. The protagonist
of *The Bonfire of the Vanities* is Sherman McCoy, a 38-year old Wall Street bond trader. Sherman loses his affluent life, his marriage and child, after he and his socialite mistress, Maria Ruskin, take a wrong turn driving into the Bronx. Maria accidentally hits Henry Lamb, a black high school student, with Sherman’s Mercedes. Sherman wants to report the accident to the authorities, but Maria resists. Once the press, black activists and the district attorney discover that they can manipulate the politics of the case, they pursue Sherman tenaciously. Even though Maria was driving, Sherman is put on trial for “reckless endangerment.” Lamb, who is in a coma for most of the story, eventually dies.

In stark contrast to the Atticus Finch model, none of the lawyers in the novel comes close to the “virtuous defender” ideal; nor does Wolfe’s novel display anything approaching the kind of respect for the law that is found in the writing of Harper Lee. Wolfe’s description of Bronx courthouse architecture holds a certain disdain for the reverential attitude toward the law that existed at the time in which *To Kill a Mockingbird* is set. Wolfe writes: “They had been built at a time, in the early 1930s, when it was still assumed that the very look of a courtroom should proclaim the gravity and omnipotence of the rule of law” (111). Clearly, Wolfe’s characters have moved beyond such respect for the law and its environments. In general, the lawyers are less interested in achieving justice than in furthering their personal agendas. None of them are representations of justice; instead, they contribute to its miscarriage and thus represent injustice.

One such character is Assistant District Attorney Lawrence Kramer, the lawyer in charge of the practical aspects of Sherman’s prosecution. Kramer appears to be suffering from the breakdown of both his personal life (he becomes obsessed with a female juror in
another case, despite the fact that he has a wife and newborn baby at home) and his professional ideals. While elements of his nature are exaggerated for satirical purposes, there is a grain of truth at the heart of his characterization. Kramer’s decision to pursue a career path as a public prosecutor, a job at which he makes very relatively little money, has left him envying the success of his former classmates who are now in private practice. He measures success purely in financial terms, comparing his own salary ($36,600) and the judge’s ($65,100) with the larger salaries of lawyers in private practice (42).

Kramer views the legal system as totally devoid of justice:

Kramer had reached that low point in the life of an assistant district attorney in the Bronx when he is assailed by Doubts. Every year forty thousand people, forty thousand incompetents, dimwits, alcoholics, psychopaths, knockabouts, good souls driven to some terrible terminal anger, and people who could only be described as stone evil, were arrested in the Bronx. Seven thousand of them were indicted and arraigned, and then they entered the maw of the criminal justice system – right here – through the gateway into Gibraltar, where the vans were lined up. That was about 150 new cases, 150 more pumping hearts and morose glares, every week that the courts and the Bronx County District Attorney’s Office were open. And to what end? The same stupid, dismal, pathetic, horrifying crimes were committed day in and day out, all the same. What was accomplished by assistant D.A.’s, by any of them, through all this relentless stirring of the muck? The Bronx crumbled and decayed a little more, and a little more blood dried in the cracks. The Doubts! One thing was accomplished for sure. The system was fed, and those vans brought in the chow. Fifty judges, thirty-five law clerks, 245 assistant district attorneys, one D.A….and Christ knew how many criminal lawyers, Legal Aid lawyers, court reporters, court clerks, court officers, correction officers, probation officers, social workers, bail bondsmen, special investigators, case clerks, court psychiatrists – what a vast swarm had to be fed! And every morning the chow came in, the chow and the Doubts! (41-42)

Here, the novel’s view of the legal system as destructive and ill-managed has much in common with the kind of hegemonic structure that Gabel and Harris’ describe, but still

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33 The citation of exact figures adds an element of realism to the exaggerated nature of the satire.
falls somewhat short of their extreme view that courts are “locuses of state power that are organized for the purpose of maintaining alienation and powerlessness” (377). Yet, it is precisely Kramer’s “Doubts” – produced by the inefficient and endless nature of the criminal justice system, and further exacerbated by his low salary – that lead him to pursue Sherman overzealously. His prosecution of Sherman is driven by ego, rather than his concern for justice. The case puts Kramer into the limelight, garnering him media attention, respect from his boss (District Attorney Abraham Weiss), and a starring role in Sherman’s trial.

Kramer’s pessimistic view of the legal system is borne out in the events of the novel, and none of the characters offers an alternative or more positive view of it. The other lawyers are no more “virtuous defenders” than Kramer.34 Weiss is referred to as “Captain Ahab” in his search for the “Great White Defendant” (396). It is clear that Weiss’ interest in justice has less to do with its pursuit than its manipulation to further his own political career. Tommy Killian, Sherman’s lawyer, defends his client vigorously throughout the trial, but he abandons his client when Sherman runs out of money and is unable to pay his legal fees. Judge Richard Posner sees Killian’s final desertion of Sherman as unrealistic. Posner claims that any lawyer representing a celebrity client would never drop the client between the trial and the appeal, even if the client had run out of money, due to the media coverage that the client would draw and the negative press that such a move on the lawyer’s part would garner (1659). However, legal scholar Neil

34 The only honourable lawyer in the novel is Sherman’s father, John McCoy, “the Lion of Dunning Sponget & Leach.” John McCoy is a very minor character, and does not take part in a professional capacity in Sherman’s trial. However, he is closer to an Auchincloss character than to any of the other lawyers in The Bonfire of the Vanities (and as a 71 year-old character, John McCoy would have been almost exactly the same age as Auchincloss when he published The Diary of a Yuppie). Sherman reveres him for his work ethic and morals.
Duxbury cites Killian’s words as an accurate example of CLS attitudes toward the failings of certain law schools to address the problems inherent in modern society. Duxbury quotes Killian’s comment on his time at Yale Law School in the late 1970s: “Yale is terrific for anything you wanna do, so long as it don’t involve people with sneakers, guns, dope, lust, or sloth” (qtd. in Duxbury 421) as an introduction to his discussion of CLS.

Despite the many similarities between the novel and views of the legal system found in CLS, Wolfe launches his criticisms on a more concrete level than those found in legal theory. Again, the novel’s main message is ultimately directed against the human motivations behind the lawsuits. While legal institutions may fall victim to Wolfe’s cutting satire, more dominant here is the story of human emotions – of greed, and the desire for fame and political success – as the driving factors behind the overtaxed legal system. Rather than an extended consideration of abstract concepts, the novel offers a harsh satire of the New York City elite, of Sherman’s initial materialism and the superficiality of life in the mid-80s. Yet, Wolfe is uncompromisingly harsh to all parties, casting the black activist group, led by Reverend Bacon, in a similarly unflattering light.

Not surprisingly, the movie version of Bonfire does not reach the same satiric depths. In true Hollywood style, the movie’s ending sugarcoats the bleakness of the novel’s conclusion. In doing so, the movie also conflates law and justice in a way that the novel does not. In the movie, on hearing Sherman’s evidence that Maria was the one driving the car, the judge orders the indictment against Sherman dismissed. One of the courtroom watchers yells: “That’s not justice, you racist pig!” The judge delivers the following speech to the silenced courtroom:

35 In the movie, the Jewish Judge Kovitsky becomes black Judge Leonard White.
You dare call me racist. What does it matter the colour of a man’s skin if witnesses perjure themselves; if a prosecutor enlists the perjurer; when a D.A. throws a man to the mob for political gain and men of the cloth, men of god take the prime cuts. Is that justice? I don’t hear you. I’ll tell you what justice is. Justice is the law. And the law is man’s feeble attempt to set down the principles of decency. Decency. And decency is not a deal, isn’t an angle or a contract or a hustle. Decency, decency is what your grandmother taught you. It’s in your bones. Now you go home. Go home and be decent people. Be decent. Mr. McCoy, you are free to go.  

This extreme version of natural justice delivers an emotionally stirring climax point at the expense of clarity, as it collapses the concepts of “law” and “justice” with “decency” and common sense. The speech is emotionally stirring because each of these key words is loaded with meaning, but rather than referring to the specific meaning of each word, their differences become obliterated and their true meaning is lost. Further, the judge’s speech presupposes that “what your grandmother taught you” is universally the same, and that “decency” is objective, rather than subjective.

Further, the movie’s ending provides positive emotional closure in a way that the novel does not. In voiceovers, journalist Peter Fallow narrates the film from beginning to end, and it is his interpretation of events on which the film ends: “That was the last I saw of Sherman McCoy. That was the last anyone saw of him. HE was gone – in a blaze of glory. A hero for our times. Or as close to a hero as we’re likely to get these days….

You see Sherman who started with so much lost everything, but he gained his soul.

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36 In the equivalent scene in the novel, Judge Kovitsky dismisses the case and quickly adjourns the court. Judge Kovitsky escapes with Sherman and Killian, and says: “The whole thing was a fucking fiasco. You don’t even know how bad it was. I shouldn’t have adjourned the court so fast. I should’ve talked to them. They … don’t know. They don’t even know what they’ve done” (680). The mob of courtroom spectators chase after the judge, enraged, but Sherman physically protects him.

37 Again, one might recall Friedman’s warning that popular culture representations of the law may be “filtered through a consciousness distorted by ignorance or bias” (1593), as discussed earlier.

38 Fallow is simply another character in the novel, and not its narrator. Unlike in The Diary of a Yuppie, the literary is not the moral foil to the immorality of law in this novel. There is no “classic literature” to offer moral guidance in this novel. Fallow’s writing is inflammatory and tabloid, yet at the end of the novel, he ends up as the “winner of the Pulitzer Prize for his coverage of the McCoy case” (690).
Where as I, who had nothing, gained everything.” This implies that Sherman’s fight with the legal system allows him to regain something of the humanity he had previously lost through his materialistic lifestyle. This is very different from the novel’s ending, in which McCoy is left mired in lawsuits. The novel terminates with Sherman’s financial ruin, his abandonment by his wife, his arrest on charges of manslaughter. He also ends up as the defendant in civil lawsuits by Lamb’s estate and the real estate agent who has sold his apartment. The novel’s ultimate message is that the legal system is absurd, a tool of political manipulation that has destroyed Sherman’s life, without the resurrection of his soul that occurs in the movie.

In his article, “The Depiction of Law in The Bonfire of the Vanities,” Judge Posner writes: “It would be a mistake to conclude, however, that because The Bonfire of the Vanities has a legal plot, legal characters, and legal scenes, it is ‘about’ law in a rich and interesting sense” (1654). Posner’s comment is paradoxical in light of his article’s title and topic. One wonders why, if the novel is so devoid of interest, Posner would bother to devote an entire article to it. Rather than focusing on popular fiction, Posner recommends looking to canonical authors such as Dostoyevsky and Dickens: “What does the novel tell us about how lay people view the law? I think nothing beyond what is obvious from finer fictional works, such as The Brothers Karamazov and Pickwick Papers: that they expect technicalities to matter; …that they are not surprised when miscarriages of justice occur; …that they expect legal proceedings to be interminable and excruciatingly expensive; and that they are unillusioned about the moral and intellectual qualities of judges, lawyers, jurors, and other participants in the machinery of legal justice, and about the corrosion of that machinery by political and personal ambitions and
fears” (1659). What Posner, with his clear preference for “elite” literature, does not acknowledge here is that there are vast differences in procedure and political context here. Clearly, contemporary American writing about the law is different from that of Russian or English authors from previous centuries; the political tensions of contemporary urban life, in this case in New York City, warrant investigation for their own sake. By ignoring these differences, Posner misses out on the potential contributions that popular literature has to offer.

Posner ends his article with the following, rather contradictory, statement about legal fiction:

Some subset of popular fiction, impossible to determine at the time of initial success, eventually joins another subset, that of esoteric or unpopular fiction, to form what we call literature, the body of writings that are somehow able to speak to people living under other skies, in other times, from those of the author and his original audience. Among the things these works speak about is, on occasion, the permanent and fundamental issues of law that we call jurisprudence. It is on this body of work, I suggest, rather than on the works of popular fiction, that the law and literature movement should concentrate. (1660-61).

The contradiction here is that Posner begins by admitting that certain works that are now considered great literature were once the popular fiction of their day. Posner’s view here negates the importance of the popular, although a decade later he appears to have recanted. Posner spends significant time discussing popular fiction in his book Law and Literature (1998), in which he analyzes popular works like John Grisham’s The Client and The Firm. Still, Posner does not withdraw his criticism of The Bonfire of the Vanities, as he writes in Law and Literature: “The satirical or political novel – The

39 Dickens, Shakespeare and Dostoyevsky were, arguably, all what today we would call mass culture in their own day – Shakespeare’s plays were accessible through cheap tickets, Dickens’ Pickwick Papers first appeared as a serialized novel, and Dostoyevsky’s The Brothers Karamazov was originally serialized in a Russian newspaper.
Bonfire of the Vanities is both – should not be judged by its resemblance to novels of a psychological or philosophical character – or to novels deeply interested in law or justice” (31). Posner’s main criteria for judging the value of a work appear to be the accuracy of legal procedure reflected in any given narrative. Yet, he vastly underrates the subversive potential of satire.

Posner contrasts The Bonfire of the Vanities with William Gaddis’ A Frolic of His Own (1994), assessing the latter much more favourably: “It [Gaddis’ novel] is not, however, a work of popular culture. Allusive, erudite and even esoteric, syntactically complex, “high modernist” in style, it is a difficult read – the most difficult of any of the books discussed in this chapter. A Frolic of His Own begins by explicitly introducing one of its major themes, the separation between law and justice: “Justice? – You get justice in the next world, in this world you have the law” (13). The main plot focuses on the legal problems of Oscar Crease, a history professor and failed playwright who believes that his Civil War-era play, Once at Antietam, has been plagiarized in the form of a major Hollywood blockbuster, The Blood in the Red, White and Blue. Oscar’s copyright infringement lawsuit against the Hollywood producers is the novel’s central concern, among many other lawsuits and legal issues intertwined throughout the sprawling plot.

40 Not even Dickens’ Bleak House is safe from Posner’s criticism, as he disapproves of Dickens’ exaggeration of Chancery court procedure (see Law and Literature 140-143). Posner appears to prefer Pickwick Papers on the basis that it is “more on the mark as legal criticism,” because it is more procedurally accurate (141).
41 The relative dearth of scholarly commentary on the novel is perhaps further evidence of its difficulty.
42 As in The Bonfire of the Vanities, the novel’s protagonist is not a lawyer, but lawyers and the legal system feature as integral parts of the novel.
43 Oscar’s play centres on the life of his grandfather, Judge Crease Sr. (the character of “Thomas” in the play). The play’s plot revolves around Thomas’s hiring of two substitutes to fight for him on both sides of the Civil War. They are both killed in the same battle, and Thomas “goes off the deep end” because he believes that he has committed “some sort of moral suicide” (397) because their deaths cancel each other out.
And yet, in tension with my discussion of the polarity between literature and topicality, Gaddis’s novel is even more saturated with contemporary American law than is Wolfe’s novel. It depicts many more lawsuits and contains far more of the texture of the law. There are three long judicial opinions, a set of elaborate jury instructions, and a deposition (32). Beyond parodying legal discourse in these forms, Gaddis’s novel also interacts with legal theory on a level that other novels (including The Bonfire of the Vanities) do not. However, both Gaddis’s and Wolfe’s novels share a similar view of the legal system.

Aside from Oscar’s main lawsuit, a comical number of other lawsuits and legal issues plague the characters. The novel begins in the hospital, where the injured Oscar has run over his foot with his own car. He becomes involved in a ridiculous personal injury claim. As the injured defendant, he ends up suing himself, as the owner of the car (which, incidentally, is manufactured by the aptly named Japanese company “Sosumi”). Oscar’s father, Judge Thomas Crease Jr., is a federal court judge and Oscar’s grandfather, Judge Thomas Crease Sr., was once a US Supreme Court judge. Lily, Oscar’s girlfriend, is involved in a messy divorce case, and seems to be endlessly switching lawyers. Near the end of the novel, one of her breast implants ruptures and she announces her intention to sue her doctor. Oscar’s stepsister, Christina, is married to a

Ironically, although, as Posner writes, the novel is “saturated with contemporary American law,” it lacks a trial or court hearing. On one level, this seems realistic, since the vast majority of lawsuits settle out of court. However, given that Oscar’s lawsuit does not settle (there is a trial and then an appeal), and given Gaddis’ scathing critique of the legal process, the lack of courtroom scenes in the novel is surprising.

There are also other forms of discourse in the novel. Apart from the legal documents, newspaper accounts of the lawsuits appear, alongside the segments of text from Oscar’s play, which explores themes of justice.

Gaddis does not use the abbreviations Jr. and Sr. to distinguish between the two men–I have added these abbreviations to avoid confusion. Gaddis relies on context in order to distinguish between them (neither of the men actually appears in the action of the novel, but Oscar and Christina refer to them as “Father” and “Grandfather”).

Two of Judge Crease Jr.’s decisions appear in their entirety in the novel, as well as a set of jury instructions.
corporate lawyer, Harry Lutz. Harry’s ironically named New York City law firm, Swyne & Dour, ends up representing the Hollywood producer Oscar is suing. When Harry is killed in an accident, Christina becomes involved in a legal dispute over his estate. Countless other lawsuits and legal issues crop up in conversation throughout. The point of all this litigation is to satirize what Gaddis sees as the ridiculously litigious condition of contemporary American society.

The separation between law and justice is explored in depth in the novel. The novel’s conception of this separation is encapsulated in the legendary exchange between US Supreme Court Justice Oliver Wendell Holmes Jr. and Justice Learned Hand. Harry explains this exchange to Christina: “A story you hear in first year law school, same argument Oscar’s grandfather got into with Holmes and here’s his son, here’s old Judge Crease down there following Holmes down the line. Justice Learned Hand exhorting Holmes ‘Do justice, sir, do justice!’ and Holmes stops their carriage. ‘That is not my job,’ he says. ‘It is my job to apply the law’” (251).

Justice Holmes is a major influence in the novel, and both his legal theory and his biography provide source material for Gaddis’s characters. However, rather than using a single figure to embody all of Holmes’ characteristics, elements of his jurisprudence and biography are divided between the characters of Judge Crease Sr. and Judge Crease Jr. Judge Crease Sr. shares certain of Holmes’ life experiences, but Judge Crease Jr. is clearly Holmes’ theoretically inspired equivalent. However, rather using each character to explore the legal theories that they represent, Gaddis’ ultimate message is that human emotions are at

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48 Mark Strasser argues that Holmes’ insistence on the separation between law and morality is over-exaggerated by many.  
49 The fictional Judge Crease Sr. served on the US Supreme Court with Justice Holmes, and fought in the same Civil War battles at Ball’s Bluff and Antietam.
the centre of problems with the legal system; neither conceptual issues nor the nature of law itself are to blame. Each of the main characters satirizes a different aspect of legal theory, but in the end no theoretical approach is preferred or endorsed over any of the others.  

Further, while each character offers a different perspective on the divide between law and justice, none of them has a truly altruistic interest in justice – there are simply varying degrees of honesty about their actual motivations. Oscar, for example, purports to be motivated for a desire for justice, but he is actually motivated by his own greed and personal insecurities. Oscar claims, “I told you what I, that all I want is justice, that’s what it’s about, what the play’s about in the first place” (54). Christopher Knight writes: “Oscar thinks of justice – eternal, transcendental justice – as something owed him. Others might think of it as an ideal, as something about which we might hope to gain an approximate cognition…. Oscar, however, is something of an innocent, a man-child, unmindful of how even such a sincere wish as his ‘I only want justice after all’” (28), said to the insurance adjuster, must find itself frustrated” (203). Knight claims that Oscar is a proponent of natural justice.  

It is true that Oscar’s play-within-the-novel involves an exploration of natural law principles – the play is heavily based on Rousseau and Plato, 

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50 This differs from other narratives in which one character’s understanding of law is privileged over another. For example, in A Man for All Seasons, Sir Thomas More is venerated for his devotion to his vision of natural law.

51 Knight also proposes that each of the characters in the novel represents a different view of the law. Justice Crease Jr., Knight claims, represents Justice Oliver Wendell Holmes Jr.’s view of the common law (217). Harry demonstrates the “justice of what is right” (222); Christina’s vision is the “justice of the heart” (231); and “a more encompassing justice” manifests itself in the figure of the pond on Oscar’s property (234). However, I would argue that the characters do not fit into Knight’s suggested categories. Despite the ostensible neatness of these categorizations, on close consideration, Knight’s terms of comparison are not uniform, parallel or supported by textual evidence. For example, he begins with terminology from jurisprudence in his analysis of Oscar as a proponent of natural law, but offers little evidence to support this.
among other sources. Further, Oscar may have inherited a desire for justice from his grandfather, Judge Crease Sr. Yet, for all of Oscar’s talk about justice, the underlying motive of his lawsuits is not truly to see justice done. While Oscar may be a man-child in some ways, he is not as innocent as Knight’s analysis suggests. Perhaps Oscar is naïve about the realities of how the legal system works (i.e., in terms of how expensive it is to launch a lawsuit), but the real driving force behind his lawsuits is greed. He uses morality to justify this greed, but the latter manages to slip out occasionally. At one point, he realizes the effect of the injunction he has been successful in winning against the movie producers: “if [the movie is] not showing anywhere what about my profits!” (384). Knight argues that Oscar “conflates justice with material success” (204). Yet, rather than conflating the two, Oscar actually uses the concept of justice as an altruistic façade for his greed. He does see financial reward and recognition as things that are owed to him, but his lawsuits are not really motivated by a desire for justice.

Nor is Oscar’s play actually written out of a desire for justice. Knight insists that Oscar’s “desire for justice is at the heart of his play, Once at Antietam…. Oscar writes the play out of a sense of obligation, first to his grandfather and then to his father” (203). Yet, Oscar’s admission of the real reason he wrote the play reveals something less honourable than filial obligation, a more pathetic aspect of his man-child personality: “All those dreams I had of taking Father to opening night, we talked about it once

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52 For example, like Oscar, Thomas states that he desires “Only justice!” (69). Thomas also quotes Rousseau: “I was brought up there in the Second Republic. Even when the Empire came back, my father had me reading Rousseau. ‘The supreme guidance of the will of the people,’ and the reign of universal reason.” (81)

One of the many ironies in the novel is that, in the course of Oscar’s plagiarism suit, it becomes apparent that he has “borrowed” from Rousseau, Plato, Camus and Eugene O’Neill. At the end of the novel, O’Neill’s estate sues Oscar for plagiarizing the play Mourning Becomes Electra.

53 Knight does, however, admit that the first of Oscar’s lawsuits – the one involving his accident with his own car – has “very little to do with justice” (206).
remember? when I told you why I wrote it in the first place? why I wanted to do something that would please him, that would make him proud of me sitting there together on opening night the way I wrote it…” (383). Considering the cold treatment Oscar gets from his father during Judge Crease Jr.’s life, the effort Oscar has expended in writing the play in order to win his father’s approval seems quite pitiable. Harry’s view of Oscar suggests an even more negative aspect of Oscar’s actions: “it’s safer to blame the world out there for rejecting who he thought he was, for all the work he’s put in on a play that’s not really about justice in the first place, not about injustice it’s about resentment, it’s resentment right from the start…blaming those faceless ogres out there instead of looking inside at the ogres we don’t want to see, don’t dare see our hand in it, who we really are…” [my emphasis] (348). Oscar’s reaction to the decision in his lawsuit backs up Harry’s opinion.

In a Dickensian turn of events, although Oscar wins the case, rather than the anticipated millions of dollars, he is only awarded damages amounting to less than $200,000, not even enough to cover his legal fees. In the end, he does get justice – but justice in theory only. There is a fundamental disconnect between Oscar’s win and the overall financial loss he suffers as a result of the case. It is a reality in many legal systems that those who seek justice, and even those who win, may end up financially punished for their efforts. However, there are also instances, perhaps even this one, in which courts send messages with the damages they award. In the end, Oscar is sorely disappointed and continues to assert that the movie producers stole his play (465).

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54 The court finds that, due to the movie producers’ contribution to the costs of making the film (ironically, including the legal costs of defending Oscar’s lawsuit), Oscar is only entitled to 1/5 of the net profits of the movie. While the gross receipts of the movie amount to $370,000,000, the producers successfully claim that the movie actually lost $18,000,000.
Oscar’s father, Judge Crease Jr., represents the other side of the law/justice divide. For Judge Crease Jr., law is the paramount concern, as opposed to justice. As noted earlier, Harry mentions, “here’s old Judge Crease down there following Holmes down the line” (251). Judge Crease Jr. shares Justice Holmes’ view of legal realism, and its distinction between law and morality. Holmes writes in “The Path of the Law”: “One of the many evil effects of the confusion between legal and moral ideas…is that theory is apt to get the cart before the horse, and consider the right or the duty as something that existed apart from and independent of the consequences of the breach, to which certain sanctions are added afterward. But, as I shall try to show, a legal duty so called is nothing but a prediction that if a man does or omits certain things he will be made to suffer in this or that way by judgment of the court” (458).

This distinction between law and morality is parodied in the character of Judge Crease. In one of his judgments, Crease rails against the concept of the ‘act of God’ (258). He writes: “With all respect due to the parties, the juries, the God fearing community, and the common man of which it seems to have more than its share of over half this country’s population planning an afterlife in the felicitous company of Jesus and even God himself, belief in God has neither bearing upon nor any relevance to these earthbound proceedings. In short, He may enjoy as much room in your hearts as you can afford Him, but God has no place in this court of law” (259). This passage satirizes the separation between law and morality, but also hints at the coldness of Judge Crease Jr.’s

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55 Again, see Strasser for a further discussion of the separation between law and morality in Holmes’ writing. Holmes continues in “The Path of Law,” specifying a limit on his distinction between the two concepts: “The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race. The practice of it, in spite of popular jests, tends to make good citizens and good men. When I emphasize the difference between law and morals I do so with reference to a single end, that of learning and understanding the law” (459).
personality that mirrors Justice Holmes’ apparent real-life coldness. One of Holmes’ biographers, Grant Gilmore, wrote: “The real Holmes was savage, harsh, and cruel, a bitter and lifelong pessimist who saw in the course of human life nothing but a continuing struggle in which the rich and powerful impose their will on the poor and weak” (qtd. in Ponnuru 47). Judge Crease Jr.’s obituary reads: “Judge Crease was a jurist in the tradition of Justice Oliver Wendell Holmes Jr, whom he frequently quoted in his legal opinions, and with whom his father had served on the Supreme Court where the two were often in conflict over demands for justice by the elder Crease confronted by Holmes’ dedication to the reason and practicality of the common law in its lack of sentimentality in applying rules of conduct regardless of hardship” (403). Judge Crease Jr.’s dedication to the positive law appears to be more genuine than Oscar’s dedication to justice.

However, the judge’s lack of sentimentality in applying the law contributes to his coldness as a father. Oscar discovers that his father has written the appellate brief for the copyright infringement lawsuit, causing Oscar to win the case. Oscar assumes that his father has done this out of love. However, Judge Crease Jr.’s law clerk reveals that the judge had other reasons (as Oscar describes in a conversation with Christina):

…I said something like that to him, that Father’s coming through with his love for me showing it that way without asking anything in return and he chuckled. He just chuckled as though it was all, as though it was all a farce no, no he said, the Judge never gave a damn for things like that, all that sentimentality or the movie you wrote he knew they were just using it to keep him off the circuit court he never blamed you, he may have thought you were a fool but he never thought you were venal and he didn’t draw up that appeal for love of anybody, not you or anybody no. It was love of the law…. (487)

Here, it is clear that Judge Crease Jr. lacked empathy for his son (Knight 221). Further, in saying that “they were just using it to keep him off the circuit court,” the law clerk
hints that Judge Crease Jr. was more motivated by political reasons than purely out of a love for the law – the judge knew he had to protect his position.

The one person who is upfront about his motivations in the novel is Oscar’s brother-in-law, Harry. As a lawyer at a large New York law firm, Harry’s self-interest is thinly veiled at the best of times. Yet, he is conscious of the injustices inherent in the legal system. Far from the heroic model of the Atticus Finch, but just as far from the Grisham-style lawyer-villain, Harry holds views that often seem similar to those expressed in CLS (the CLS movement was roughly contemporaneous with the publication of this novel).\(^{56}\) Much of the same criticism of the law as a tool of political and economic forces occurs in both. On the place of litigation in American culture, Harry offers the following comment: “if everyplace you looked here wasn’t ridden with mistrust you wouldn’t have one lawyer for every five hundred people mostly can’t afford one anyway, whole country conceived in competition rivalry bugger they neighbor, the whole society’s based on an adversary culture what America’s all about…” (424). This comment seems to capture the essence of CLS’s view that the legal system is unaffordable for many people. However, Harry’s comment is also reminiscent of Timothy O. Lenz’s veiled references to America’s origins in revolution, discussed in Chapter 1.

Like Auchincloss’s Robert Service in The Diary of a Yuppie, Harry turns to literature for an understanding of society, rather than to the legal system or its reform. Specifically, Harry turns to Dickens. Part of Harry’s obituary reveals that he began his

\(^{56}\) Knight’s assessment of the novel also has much in common with CLS views, although he does not mention the movement as an influence on either his own or the novel’s ideology. For example, he writes: “Justice, if it exists, is more available to those with ‘deep pockets’ than to the citizen of ordinary or less than ordinary means. In A Frolic of His Own, justice carries a very expensive price tag, and ends up looking much more like injustice” (203). However, he never identifies the movement by name.
legal career with “a growing sense of injustice which he later ascribed to his reading of Dickens” (459). The obituary (as read aloud by Christina) continues its description of Harry’s character: “after working his way through law school and serving with a number of small public interest law firms became increasingly disillusioned with the law as an instrument of justice and this is more like him, yes, to regard it as a vehicle for imposing order on the unruly universe depicted by Dickens that’s more like Harry isn’t it, what he saw all around him, initiating his rapid climb in the complex field of corporate law…” (459). Ultimately, Harry’s sense of injustice is eclipsed by his disillusion and/or his desire for personal advancement in his career – to the point where he is unwilling to provide Oscar with legal help. Harry even lists his law firm, rather than his own wife, as the beneficiary of his life insurance policy.

Thus, despite each character’s varying degrees of ostensible commitment to law and justice, in each case, baser motivations are at work. A Frolic of His Own engages with legal theory more than any other text examined in this study, for example in its use of Holmes and in the way that different characters represent different aspects of legal theory. Yet, authors, even Gaddis, are not legal theorists. At the heart of this novel is a very human story, and unlike legal theory, this and other fictional legal narratives point to the human emotions underlying law. The main message of the novel is not related to theoretical concerns, but to human ones. The novel blames individual human desires – greed and self-promotion – for the failure of the legal system, rather than attempting to examine the nature of law, or the failure of the legal system on a collective level. Greed and self-promotion are rarely discussed on the individual level in legal theory, and they
are only ever discussed on the collective level euphemistically, as “economic and political pressures.”

Gaddis said in an interview: “This free enterprise society is an adversarial society, so the law emerges from that adversarial attitude. So here we are, all adversaries” (Gaddis, qtd. in Knight 202-3). Not only does the novel sustain the view that we are adversaries working against each other, but it also suggests that we are fighting against ourselves. The theme of “man against himself” is summarized in the following passage of the novel: “the microcosm of his nation’s history, of man against himself, of self-delusion and self-betrayal, of the very expediency at the expense of principle we see blindly laying waste to our hopes and our future today, of the urgings of destiny, and the unswerving punctuality of chance” (50). This theme recurs – first with Oscar’s personal injury lawsuit (involving the car accident) against himself, and again when part of his profits from the copyright infringement lawsuit are eaten up by defense lawyers for the other side, and once again when Judge Crease Sr.’s Civil War substitutes kill each other in the play-within-the-novel.

Gaddis does not turn to the law or legal theory for answers to the problems he sees in the legal system, but rather he turns to art. Implicit in his criticism is a contrast not between differing views of the legal system, but between law and art. The title, A Frolic of His Own, refers to a legal concept discussed in the novel, and also, in Gaddis’ conception, provides a description of the role of the artist. Harry explains the significance of the terms in legal parlance: “–Just a phrase, comes up sometimes in cases of imputed negligence, the servant gets injured or injures somebody else on the job when

57 This passage from the novel is a review of the movie, The Blood in the Red, White and Blue, in which the reviewer criticizes the movie’s failure to examine these issues.
he’s not doing what he’s hired for, not performing any duty owing to the master, voluntarily undertakes some activity outside the scope of his employment like…” (348).\textsuperscript{58} Harry believes that Oscar is “off on a frolic of his own writes a play and expects the world to roll out the carpet for…” (348). Christina reacts by asking: “he’s done something nobody’s told him to, nobody hired him to and gone off on a frolic of his own I mean think about it Harry. Isn’t that really what the artist is about?” (349). Art, as much as it is also satirized throughout the novel in various forms,\textsuperscript{59} is essentially what is left at the end of the novel. The title also refers to Gaddis’ own status as an artist, and to the novel as “a frolic of his own.” Gaddis’s novel is also a voluntary undertaking outside the scope of employment. It is art, not law or legal theory, to which Gaddis ascribes the power to examine meaningfully issues of law and justice. And art, as a “frolic,” has an independent status and is answerable to no master.

Conclusion

Clearly, fictional legal narratives offer a wide range of representations in their portrayal of American lawyers and judges. Despite the different levels of interaction with legal theory, at their heart, fictional legal narratives focus on human stories. It is exactly this private dimension that ties together the wide range of images explored in this chapter. In this respect, jurisprudence and fiction differ greatly, as each identifies different forces responsible for the divide between law and justice. CLS, for example, focuses mostly on institutions as the site of the legal system’s inability to achieve justice,

\textsuperscript{58} Holmes also comments on the concept of the legal term “frolic” in “The Path of Law”: “Why does a judge instruct a jury that an employer is not liable to an employee for an injury received in the course of his employment unless he is negligent…? It is because the traditional policy of our law is to confine liability to cases where a prudent man might have foreseen the injury, or at least the danger, while the inclination of a very large part of the community is to make certain classes of persons insure the safety of those with whom they deal” (468).

\textsuperscript{59} E.g., Oscar’s play; Judge Crease Jr. judges a case involving an artist who is attempting to protect his sculpture, “Cyclone Seven,” after a dog becomes trapped in it.
while American fictional legal narratives almost inevitably single out greedy individuals (lawyers and others) and corrupt law firms as the cause of the legal system’s problems. However, in some narratives, the figure of the lawyer may still offer solutions and occasionally even salvation. The anthropomorphization of law in American fictional legal narratives is a trait shared by other cultures, as I explore in the following chapters. However, while American popular legal culture influences images in other countries, no other country exhibits the same intense interest in the figure of the lawyer, nor displays the range of lawyer images that exists in the United States.
Chapter 3

The Rule of Law and the “Golden Thread”:
Reverential Anthropomorphizations of British Law

Despite the rich literary history of lawyers in British literature,¹ the UK produces a smaller number of contemporary fictional legal narratives in comparison to the vast volume of American novels, movies and television shows dedicated to lawyers. This is somewhat surprising, considering the elevated social status and well-established history of the figure of the barrister in Britain, and to a slightly lesser degree, the solicitor.² However, the British fictional legal narratives that do exist are often memorable, and sometimes even iconic. A wide range of images of lawyers and judges is found in works such as the film A Man for All Seasons; John Mortimer’s Rumpole of the Bailey; Dexter Dias’s legal thriller, The Rule of Law; the recent, popular Judge John Deed television drama series; Frances Fyfield’s Helen West novels; and David Hare’s play, Murmuring Judges. More than lawyer- and judge-driven narratives in other countries (including the United States), the existing British fictional legal narratives seem to explore jurisprudential concepts on an abstract level, and are generally concerned with explicitly examining the relationships between law, power and sovereignty. In general, while some

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¹ It is through English literature, and in particular through the study of canonic authors such as Shakespeare and Dickens, that the law and literature movement got its first footholds America. James Boyd White and Judge Richard Posner both rely on Shakespeare and Dickens as foundational authors in their seminal examinations of the intersections between law and literature. Even earlier studies in law and literature (see, e.g., Irving Brown, Law and Lawyers in Literature (1883) and John Marshall Gest, The Lawyers in Literature (1913)) also base their analyses of the subject on these two authors, among others.
² The British legal profession has traditionally been divided into two distinct positions: the barrister and the solicitor. Historically, barristers are advocates, and are responsible for representing their clients in court. Solicitors usually handled the non-advocacy aspects of legal practice (including trial preparation). However, in recent years, the responsibilities of the two professions have slowly been converging, as I will discuss in more detail later in this chapter. Yet, the traditional division in the legal profession may account to some degree for the fact that there are fewer fictional representations of lawyers in Britain. Barristers may be an influential group, but they are a small group in comparison to the large number of American lawyers.
British fictional legal narratives may criticize the legal system, they do generally do not launch a theoretical attack on the underlying principles of English justice. On the contrary, they tend to perpetuate the idea that, if correctly executed, the fundamental principles of British law would lead to a just and harmonious society.

Corresponding to the lower volume of creative production in this area, the law and literature movement has not reached the same dimensions that it has in the United States. However, like the impact of British fictional legal narratives, existing British contributions to the theoretical field have been strong. In one collection of critical essays, Michael Freeman and Andrew D.E. Lewis’s *Law and Literature*, Anthony Julius attempts to explain the popularity of fictional legal narratives in the United States in relation to England. He attributes the relative lack of imaginative production in this area to social factors: “the authority and influence of lawyers, as a distinct group, is far greater in the United States than in England. Only in America, when the good fairy appears, does the ordinary Joe growl: “See my attorney!”” (xxii). Julius also notes that American lawyers have also pursued literary careers, and “wrote many of the country’s first important novels, plays and poems” (xxii). Further, he notes that “[t]he United States, in contrast to England, has a constitutively legal culture, finding liberty through law, rather than setting liberty against the law” (xxiii). In my view, a historical element, the significant decline in power of the profession since the medieval period, may also account partly for the contemporary lack of interest in the lawyer as protagonist. Richard L. Abel states: “English lawyers professionalized earlier than did lawyers in other

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3 E.g., see my discussion of Peter Fitzpatrick’s work in Chapter 1. Other British contributions to the field include Ian Ward, *Law and Literature: Possibilities and Perspectives* and Mária Aristodemou’s feminist text, *Law and Literature: Journeys From Her to Eternity*. 
common law countries and also may be deprofessionalizing sooner” (23). 

Less convincing is Julius’s attribution of the absence of large quantities of fictional legal narratives to the overshadowing influence of Dickens:

The English legal profession of the present time still awaits its satirist: the ‘old school’ protecting its privileges in the name of an invariably bogus collegiality, the ‘new school’ merely trading in law, oblivious to justice. This ugly, exhilarating world, full of bad faith, ambition, energy and fear, needs a Balzac to capture its excitement and its dishonour. Our own novelists can’t seem to manage this, probably because *Bleak House* is still too powerful a presence, and the acid of *that* novel dispatches its lawyers too summarily. Dickens makes short work of the lawyers; law itself is his target – a target at which no American could aim without also thereby turning his weapon against himself. (xxiv)

Yet, while they may not be appearing in as vast numbers as the American writers, not all contemporary novelists have shied away from the literary shadow of *Bleak House*. Screenwriters and playwrights have also contributed their descriptions of the existing legal regime. While they may not be of the ilk of Balzac or Dickens, some are blisteringly critical of the British legal system in their own ways (see, for example, Hare’s *Murmuring Judges* or Mortimer’s *Rumpole* stories).

Whatever the criticisms of the legal system, the majority of the narratives studied in this chapter portray lawyers and judges as contemporary manifestations of the “enlightened individual” described by Peter Fitzpatrick. Despite Julius’s claim that

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5 Another possible literary explanation for the relative lack of British fictional legal narratives is that, like the French and the Germans, the British have a strong tradition of detective fiction, which allows them a different outlet for exploring the concepts of law and justice from a different angle. However, Americans also produce a lot of detective fiction, so this argument seems less than convincing.
6 However, unlike in the United States, there is a surprising lack of films with lawyer protagonists in the UK. One of the few British lawyer movies is *What Rats Wouldn’t Do* (1998). Lawyers appear occasionally as supporting characters in movies, such as director Jim Sheridan’s *In the Name of the Father* (1993) and John Cleese’s comedy, *A Fish Called Wanda* (1988). Yet, neither of these films is exclusively British. *In the Name of the Father* is often classified as “Irish-British-American.” *A Fish Called Wanda*, although written by the Englishman John Cleese, was produced by an American studio, MGM.
7 Again, see my discussion of Fitzpatrick in Chapter 1.
Americans are more likely to “[find] law through liberty, rather than setting liberty against the law” (xxiii), many British fictional legal narratives do not reflect this latter position.\textsuperscript{8} Just as not all Americans are uncritical of the legal system, not all British writers are critical of it, nor do they approach it in the hyperbolically critical manner of Dickens. Further, even the most critical contemporary British writers do not fault the principles on which the legal system is based; their criticisms are process-oriented, not substantive.\textsuperscript{9} Instead, many of them preserve the concepts inherent in English law as the highest truths, and present lawyers and judges as their guardians.

Perhaps valued highest among these concepts is the “rule of law,” which is, at is most essential expression, the principle that “[a]ll men are equal before the law,” as elucidated by British legal theorist A.V. Dicey in 1885. Dicey’s Introduction to the Study of the Law of the Constitution continues to be influential, and the rule of law has been described as “the ideal according to which all political and governmental power is in fact exercised under rules of law (Veitch, Christodoulidis and Farmer 6).\textsuperscript{10} The often unquestioning reverence for the rule of law may partially be tracked back to the importance of common law in Britain. Britain lacks a written constitution (unlike all the other countries in this study); case law, ancient legislation and custom provide sources for British constitutionalism. T.R.S. Allen explains, in the context of discussing the

\textsuperscript{8} Further, as I show in Chapter 2, there are many American fictional legal narratives that do criticize the law. See, e.g., my discussion of Wolfe and Gaddis.

\textsuperscript{9} See my analysis of the difference of substantive and process-oriented elements of the law in Chapter 1. Even Bleak House did not satirize legal principles in a theoretical way, but rather aimed its main attack at the multiplicity of legal procedures clogging up the court system.

\textsuperscript{10} Veitch, Christodoulis and Farmer explain further: “Only where officials faithfully observe the constraints laid down in laws and constitution does the rule of law obtain. It is commonplace that societies that live under the rule of law enjoy great benefits by comparison with those that do not. The rule of law is a possible condition to be achieved under human governments. Among the values that it can secure, none is more important than legal certainty, except perhaps its stablemate – security of legal expectations and safety of the citizen from arbitrary interference from governments and their agents” (17).
Influence of Dicey’s work:

In the absence of a higher ‘constitutional’ law, proclaimed in a written Constitution and venerated as a source of unique legal authority, the rule of law serves in Britain as a form of constitution. It is in this fundamental sense that Britain has a **common law constitution**: the ideas and values of which the rule of law consists are reflected and embedded in the ordinary common law. If important liberties are given protection, and standards of justice and fairness accepted and upheld, it is ultimately because – and largely to the extent that – they find expression in the common law . . .

The central role of the common law in the constitutional scheme placed unique responsibility on the shoulders of the judges of the ordinary courts. If in those Continental countries which possessed written constitutions, individual rights were ‘deductions drawn from the principles of the constitution’, in England by contrast the principles of the constitution were ‘inductions or generalisations based on particular decisions pronounced by the courts as to the rights of given individuals’. (4)

Dicey viewed the rule of law as an equally strong concept in the United States. However, British fictional legal narratives seem to reflect a higher emphasis on the common law tradition in the UK, in my view partially as a result of this lack of a written constitution. If Allen is right about the unique responsibility of British judges of the ordinary courts, perhaps the respect for the figure of the British judge can be likened, to a lesser degree, to the reverence the Americans accord to the framers of the United States Constitution.

The rule of law is sometimes claimed as a natural law concept, since implicit in positive law views is the rejection of the notion that law can guarantee the safeguards to individual rights that proponents of the rule of law promise, since in the positive law view law can potentially include ‘evil’ law. However, the rule of law is not necessarily always tied to natural law. For example, Joseph Raz, a positivist and former student of Hart, argues that the rule of law is morally neutral. He likens it to a “sharp knife” that can be used as an instrument for either good or evil, and writes that the rule of law “is not to be confused with democracy, justice, equality (before the law or otherwise), human rights of
any kind or respect for persons or for the dignity of man. A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregations, sexual inequalities and religious persecution may, in principle, conform to the requirements of the Rule of Law better than any of the legal systems of the more enlightened western democracies” (197).

Scholars have also criticized recent invocations of the rule of law as vague and imprecise.11 British fictional legal narratives sometimes do this as well, as I will discuss shortly. But there are others who question the entire concept. Peter Fitzpatrick points to the fallibility of law as a human construct:

For law to rule, it has to be able to do anything, if not everything. It cannot then, simply secure stability and predictability but also has to do the opposite: it has to ensure that law is ever responsive to change, otherwise law will eventually cease to rule the situation which has changed around it. So, how could the rule of law be complete if it must ever respond to the infinite variety of fact and circumstance impinging on it? How could it be closed when it must hold itself constantly responsive to all that is beyond what it may at any moment be? (Modernism 71)

Fitzpatrick continues, noting law’s potential to create disaster: “And every tale of law’s bringing order to disordered times and places, along with the triumph of such things as modernity or capitalist social relations, can be matched by others where it created uncertainty and inflicted massive disorder in the same cause” (Modernism 71). Only one narrative considered in this chapter, Hare’s Murmuring Judges, presents a story in which law inflicts disorder. However, even Hare’s play does not go as far as to criticize the rule of law. In the various images of lawyers and judges studied in his chapter, a respect for

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11 See, e.g., Jeremy Waldron, “Is the Rule of Law an Essentially Contested Concept (in Florida)?” While commenting on the invocation of the rule of law in the 2000 U.S. Presidential Election, Waldron’s article explains the confusion surrounding the concept in more general ways. Waldron concludes that although the concept may not always be articulated precisely, it is an inherently good principle.
the rule of law and for substantive legal principles and emerges as a common trait among British fictional legal narratives.

Reverence for the Rule of Law as an Element of Natural Law

Robert Bolt’s 1960 historical play, A Man for All Seasons, offers an example of the esteem for natural law principles that certain British fictional legal narratives display. It tracks Sir Thomas More’s decline from his position as Chancellor of England to his arrest, trial and execution under the reign of Henry VIII. The King claimed that his marriage to first wife Catherine of Aragon was unlawful (because she was his brother’s widow), thereby leaving him free to marry his second wife, Anne Boleyn. The central dispute in the play is More’s refusal to acknowledge Henry’s second marriage. More opposed the King’s insistence that the Pope had no authority to sanction the marriage, and rejected Henry’s position as head of the Church of England.

However, the hero of A Man for All Seasons is a twentieth-century character, a figure reconsidered through the filters of contemporary legal theory and concepts of selfhood that do not necessarily accord with historical fact. In the film adaptation, as in the play, More displays an unyielding faith in the law. However, it is a particular view of the law to which More clings. Patrick Whiteley explains that it is possible to read the film as a dramatization of the debate between natural law and positive law theory (the distinction between law as derived from a divine source on one hand, and law as a man-

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12 The play was adapted into an Oscar-winning film directed by Fred Zinnemann in 1966. Bolt also wrote the screenplay, and in the process of adaptation, he made changes to relatively minor elements, such as the removal of certain scenes and the modification of some of the dialogue. He also removed the character of the Common Man, who functions like a Brechtian chorus in the play. However, the main themes and characters remain the same, and as such, my discussion applies to both the play and the film.

Note the recycling of film and television actors, as Leo McKern (later cast as Rumpole) appears in the 1966 film as Cromwell. The narrative was also re-made a number of times, appearing first as a radio play in 1954, again as a film starring Charleton Heston in 1998, and subsequently as a radio play by BBC 4 in 2006.
made construct separate from morality, on the other) that took place during the 1950s and 1960s. More’s faith in the law is illustrated in an argument with his future son-in-law, William Roper, in which the two debate More’s refusal to bend the law in order to arrest Sir Richard Rich:

More: Yes. What would you do? Cut a great road through the law to get after the Devil?
Roper: I'd cut down every law in England to do that!
More: (Roused and excited.) Oh? (Advances on Roper.) And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? (He leaves him.) This country's planted thick with laws from coast to coast-man's laws, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then? (Quietly.) Yes, I'd give the Devil benefit of law, for my own safety's sake. (41-42)

More’s staunch faith in the law is juxtaposed against Sir Rich’s disregard for it. Rich perjures himself at the end of the narrative, which results in More’s execution. More believes firmly to the end that his silence will save him, and that the law will protect him. But for Sir Rich’s perjury, it appears that More’s arguments might have been successful, and the film and play both leave open the question of whether More’s persistent clinging to his version of the law would actually have been sufficient to avoid his beheading.

Whiteley identifies More as a jurisprudential inheritor of the views of Thomas Aquinas, whose definition of law is that “every human law has just so much of the nature of law as it is derived from the law of nature. But if in any point it departs from the law of nature, it is no longer a law but a perversion of law” (qtd. in Whiteley 762). An

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13 This is exemplified by the Hart/Fuller debate (see my discussion in Chapter 1). Hart’s work appears to have made surprisingly little impact on British fictional legal narratives, despite his influence in the realm of legal theory.
14 However, More’s speech to Roper, quoted above, appears to contradict More’s belief in the necessity of law as derived from nature. More’s speech specifically stresses the importance of “man’s laws, not God’s” (42).
example of this is More’s speech after his sentencing, during which he refers to the “law of God and the Church” as “grounded by the mouth of Jesus Christ Our Lord.” Whiteley alludes to the rule of law in natural law theorist John Finnis’ description:

Adherence to the Rule of Law (especially … conformity by officials to pre-announced and stable general rules) is always liable to reduce the efficiency for evil of an evil government, since it systematically restricts the government’s freedom of manoeuvre. The idea of the Rule of Law is based on the notion that a certain quality of interaction between ruler and ruled, involving reciprocity and procedural fairness, is very valuable for its own sake; it is not merely a means to other social ends, and may not be lightly sacrificed for such other ends. It is not just a “management technique” in a programme of “social control” or “social engineering.” (Qtd. in Whiteley 768)

It is possible to view Henry as directly opposed to these principles, as a representative of the positive law view that “the obligation to obey is centered on his political position” (765). He manages, through various legal documents and More’s trial, to change the law according to his personal desires. Yet, Whiteley urges a more subtle interpretation of the work, based on his view that Henry is also a proponent of natural law. Henry’s claim for the head of the church, according to Bolt’s play and screenplay, is based on his belief that his marriage to Catherine goes against God’s law: “Thomas, Thomas, does a man need a Pope to tell him when he’s sinned? It was a sin [to have married a sister-in-law], Thomas; I admit it; I repent. And God has punished me; I have no son … Son after son she’s borne me, Thomas, all dead at birth, or dead within the month; I never saw the hand of God so clear in anything … It is my bounded duty to put away the Queen, and all the Popes back to St. Peter shall not come between me and my duty!” (Qtd. in Whiteley 770). Thus, Whiteley argues that both More and Henry are proponents of natural law, albeit with differing interpretations, but both believe in law derived from the divine.
Anthony Chase argues that the real historical issue was not, as portrayed in the film, a struggle between “conscience vs. convenience, legal principle vs. political pressure” (124). In Chase’s view, the actual problem was More’s allegiance to the Church versus the state, in response to the appearance of the state system and its newly formulated theoretical basis in the “doctrine of sovereignty” (124-5). Thus, rather than a battle of individual morality, it is possible to view the historical situation as a battle of institutions, with individuals and their morals simply caught in the middle. In light of Chase’s analysis, it becomes apparent that the dramatization in *A Man for All Seasons* emerges from the particular biases of the twentieth-century mentality, and its attempt to understand the foundations of “law.” *A Man for All Seasons* can be seen as a contemporary perpetuation and renewal of the mythologization of a single individual. More’s elevation into the realm of myth occurred long before the existence of Bolt’s play and screenplay – and not only as a cultural figure, but as an official symbol of Catholic martyrdom, with his canonization in 1935. The positioning of Sir Thomas More at the centre of the debate between natural and positive law, as well as between church and state, demonstrates the drive toward anthropomorphization of debates involving abstract and collective concepts.

More’s conception of selfhood in the film is equally questionable. Historical realities about More undermine the fictional representation. Both Whiteley and James Wood point out the fact that More was involved in the interrogation and imprisonment of Lutherans, and was complicit sending six “heretics” to their deaths at the stake (Whiteley 773-4; Wood 3-15). Whiteley highlights Bolt’s preface to the play, where Bolt outlines his concept of individuality: “in the contemporary age the self’s integrity is constantly
under attack, that there are fewer ways of defining the boundary between self and society.” The self has become, he worries, “an equivocal commodity,” for “there are fewer and fewer things which … ‘we cannot bring ourselves’ to do” (778). Whiteley points to a passage of dialogue that exemplifies More’s concept of selfhood. Prior to his arrest, More’s conversation with his friend Norfolk includes the line: “But what matters to me is not whether it’s true or not but that I believe it to be true, or rather, not that I believe it, but that I believe it … I trust I make myself obscure?” (qtd. in Whitely 779). To Whiteley, this smacks of anachronism: “his reasoning here exacts a disjunction between subject and predicate, between his sense of selfhood and the truth in which he believes, that the historical More would scarcely claim to understand, let alone embrace” (779). Wood is even more adamant about the misleading construction of More’s identity in A Man for All Seasons: “Most absurdly, because of Robert Bolt's screenplay, this barrister of Catholic repression is widely envisioned as modernity's diapason: the clear, strong note of individual conscience, the note of the self, sounding against the authoritarian intolerance of the Early Modern state” (3). The fictionalized conception of More exemplifies the mythological “fully conscious individual of Europe” that Fitzpatrick deconstructs, embodied as a lawyer.15 The character also fulfills the criteria for being the ideal protagonist described by screenwriting guru Robert McKee;16 the lawyer protagonist acts as a filter for the consideration of larger legal issues, regardless of whether the figure’s individuality and the legal theory raised are anachronistic within the film’s Tudor setting.

### Ambivalent Views of the Rule of Law

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15 See my discussion in Chapter 1.
16 Again, see Chapter 1.
A more ambivalent view of the foundational principles of English law is found in Dexter Dias’s novel, *The Rule of Law* (1997), in which the importance of law also emerges at a human cost. Dias, a practicing barrister, has invoked comparisons to John Grisham. The influence of American legal thrillers is clear not only from the novel’s lawyer-centred plot, but also from its settings and constant references to American culture. However, it also considers certain particularly British issues, and as we shall see, takes a quotation from Dicey as a starting point for understanding the concept of the rule of law. The novel begins in Manhattan, but the action continues in both New York and London. Dias even distinguishes English and American court procedure as though he is making allowances for American readers: “In contrast to the United States, the convention in England was that the prosecution should make the first closing speech” (485). *The Rule of Law* also shares the American propensity for conspiracy theories, as its plot centres on an elaborate scheme by the British government that stems back to World War II. The novel’s protagonist, barrister Dan Becket, is blackmailed into prosecuting former British war hero Simon Montford, who is now accused of committing a war crime. Montford stands trial for the murder of Russian Jew Ivan Basarov in a fictional concentration camp, Neuwelt.

Becket discovers that Basarov was killed while Montford was demonstrating that the gas chambers at the concentration camp worked, and that the nerve gas developed by the Nazis was effective. Becket also finds out that Britain recruited Nazi chemists and

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sold chemical weapons to Iraq. The novel struggles with the conception of Britain as the liberator of Nazi-occupied territories at the end of WWII, and presents a hazy picture of the happenings around the Allied liberation of concentration camps. It also points a finger at Britain’s contemporary political choices in the selling of nerve gas to Iraq. On one hand, Britain is presented as a victor; on the other, it is guilty of committing war crimes.

The novel weaves together several different narrative strands in its overarching exploration of the motivations behind prosecuting war criminals, as articulated in Becket’s internal monologue:

Dan Becket could see no useful purpose in trawling through the wreckage of war-torn Europe fifty years previously – to do what exactly? To prosecute a small group of octogenarians who had led perfectly normal lives for half a century? There was no point. That was the theoretical answer. It was logical. But in his experience, logic did not always lead to the right answer, just as the law did not inevitably lead to justice. Nor love to happiness. So the thought that these men, these mass murderers, people who had participated in killing on an industrial scale, should live out the rest of their lives in peace that stuck in Dan’s throat. (6)

Despite Becket’s realization of the possible disconnect between law and justice, that disconnect does not extend to a criticism of the rule of law. The principle remains sacred throughout the novel. As mentioned, Dias prefaces the novel with a quotation from Dicey’s Law of the Constitution: “The Rule of Law. All men are equal before the law, and the fundamental rights of the citizen, the freedom of speech, the freedom of association, the freedom of the person, are exempt from arbitrary powers, privileges and prerogatives.” Yet, the novel does not provide further explanation or elaboration of the

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18 The latter, at least, is based on fact (Leigh and Hooper).
rule of law as a jurisprudential concept. Dias borrows Dicey’s weight without further
discussion of the rule of law, or inviting the reader to question the complexity or validity
of the concept. Instead, the novel offers an extended concrete illustration of the core rule
of law idea that no one is above the law.

Against the Dicean concept, Dias juxtaposes the Nazis’ lack of rule of law.

Becket discusses this with his father, Jo:

“Those books I read. Know what they said? One of the first things the
Nazis did, they hijacked the courts. That’s what they all do, Jo. Every
single one of them who thinks they know the truth. They break the rule of
law. They impose their view of right and wrong […]. But if there are
rules, we should stick to them. If we don’t like them? Change them.”
“It’s as simple as that?” Jo snapped.
“No. But we can’t play God with the system – with the rule of law.”
“Why the hell not?”
“Because if we play God enough, finally someone comes along and
plays the Devil.” (492)

Yet, while the Nazis may have broken the rule of law, some legal scholars have argued
that they actually did adhere to the law. There are compelling arguments that the Nazis
actually used law, rather than simply sidestepping it (see my discussion in Chapter 6).

Dias does not address the fact that the Nazis actually did act very much in accordance
with Becket’s advice: “If we don’t like them? Change them.” Specifying the “we” to
whom Becket refers could solve this problem. Aharon Barak, President of the Supreme
Court of Israel (as he then was), commented in 2003: “In Nazi Germany there was the
Rule of Law. The Fuehrer’s word was law and had to be fulfilled. The Nazi government

References that might relate to legal theory are occasionally dropped into the text, but are not discussed
explicitly. At one point, Dias describes the courtroom in which Montford’s trial takes place, with “the
royal crest above and behind them: Dieu et mon droit” (“God and my right”) (36). A discussion of the
origins of sovereign power could prove useful here, but there is no explicit discussion of this, nor is the
motto ever mentioned again.

Ultimately, by the end of the novel, characters who attempt to sidestep the rule of law by vigilante means
are punished in turn, as I will discuss shortly.

Note the similarities between this exchange and the argument between More and Roper in A Man for All
Seasons, discussed above.
acted upon laws that it created for itself. This is not the Rule of Law that we are asked to preserve. The Rule of Law of which we speak is the rule of democratic law.”

Becket, however, also struggles with his own faith in the rule of law throughout the novel, as he has been using Jo as the star witness in the case against Montford, but without disclosing the conflict of interest to the court. He knows that to do so would be to ruin the case. Becket ultimately refuses to allow the corruption of his case to go on unabated, and just before the jury is about to deliver the verdict, he admits in open court that his star witness is his father. The judge orders a retrial and dismisses the jury, despite the jury’s guilty verdict. However, the novel does not end with the adherence to the law as its final message. Basarov’s son Yuri (Becket’s blackmailer-turned-ally) kidnaps Montford, and takes him to a warehouse full of nerve gas chemicals. Yuri intends to kill Montford, as he is disillusioned with the possibility of achieving justice through legal means: “There is going to be another war crimes trial. But these cases take so long before they come back to court and there are so many ways in which an old man can die. Who knows? In all the excitement of the trial, Comrade Rosen might have a curious … hardening of the arteries. And then Montford would win the retrial” (505). Naturally Becket counsels him against it, saying “You can’t execute them, Yuri….That’s what Montford and Keller did to your father. You can show you’re stronger than they are. Spare them” (511). Montford is killed when, in a struggle for Yuri’s gun, a shot punctures one of the barrels and triggers an explosion. Yuri also perishes in the fire, but Becket survives.

\[22\] In Fitzgerald’s conception, even democratic law has the potential to “[create] uncertainty and [inflict] massive disorder” (Modernism 71).
The contrived nature of the ending is disturbing, but its confusing underlying message is even more problematic. The novel’s ending leaves open many questions about its portrayal of the barrister figure and the concept of the rule of law. Morally, it seems as though Becket’s insistence on the rule of law ought to prevail. However, it is essentially vigilante justice that brings Montford to his end. In my view, even though Yuri does not intentionally shoot Montford, as he was planning to do, Montford’s “accidental” death would not have occurred if he had not been kidnapped and trapped in the nerve gas warehouse. Despite its partial condemnation of the British government’s decision, and the barrister’s inability to bring the murder case to an emotionally satisfying conclusion, the novel somehow still manages to celebrate the barrister as a master of reason, and to glorify the concept of the rule of law. Becket’s heroic qualities stem from his willingness to trust in the rule of law, and his unquestioning adherence to the English legal system. Becket’s reverence for the law recalls that of St. Thomas (à) Becket, the twelfth-century Archbishop of Canterbury and Chancellor of England appointed by King Henry II. St. Thomas Becket was devoted to canon law, to the point of refusing to formally sign the Constitutions of Clarendon, which were legislative procedures eventually passed by Henry. One of the main issues was the jurisdiction of secular courts over clergymen; Becket insisted that the “right of clergy,” or the right to be tried in ecclesiastical courts, should remain. He was later assassinated by the king’s men, and venerated as a saint and martyr. Dias’s Becket echoes the saint’s devotion to the rule of law.

However, in the novel, Becket is not martyred, but is the one left alive at the end. Becket’s survival at the end of the novel is perhaps a symbolic approval of his reverence
for the rule of law. In contrast, Yuri, who chooses the vigilante path, ends up dying in the explosion. It seems that the novel’s ultimate message is that, while law does not rule in this case and vigilante justice essentially does, vigilantes are equally punished because of their transgression against the rule of law. It would not seem just if Yuri had survived the explosion. Yet, the death of the vigilante seems as though it is some sort of necessary sacrifice in order to achieve what Dias obviously intends as a more emotionally satisfying ending in which Montford dies.

The novel’s ending also highlights the ambivalent aspects of Britain’s role as liberator at the end of the war. Jo, injured in the explosion, dies in hospital, and after his death, his son draws back the curtains to view the sunrise:

The hospital room was high up and gave a spectacular view. To the south Dan could see the river dividing the city in two, flowing slowly out of London, past Tilbury, and into the stretch of water that separated England from continental Europe. The wind had blown itself out and the first traces of dawn stained the horizon far to the east. It was a staggering sight.

As the room filled with brilliant morning light, he wondered if there was a similar dawn over Germany on that day in April 1945 when the British tanks rolled into Neuwelt. (518)

Although the nerve gas developed by the British has claimed Jo as a victim, and the potential nerve gas deals with Iraq still remain unresolved, the novel still essentially ends on a positive note. However, with no further elaboration of its foundational principles, the novel’s ultimate message remains ambivalent at best. There are aspects of the novel that provide unfortunate examples of vague and imprecise invocations of the rule of law. For example, it is possible to read the novel’s title as an ironic reference to the failure of the rule of law, but one gathers from the substance of the novel and its ending that Dias considers the rule of law to be worthy of respect. Considering Dias’s reverent treatment of the rule of law throughout the narrative, and in light of the novel’s ending, the best
reading of the novel appears to be that the preservation of the rule of law is paramount, even at the expense of justice in any individual case, and at the cost of individual victims’ lives.

**Irony and Parody of the Law**

Another complicated view of the English common law exists in John Mortimer’s *Rumpole of the Bailey* stories, which are perhaps the most famous and beloved barrister narratives.\(^{23}\) The stories mix mystery and satire and cast Rumpole simultaneously in the roles of detective, storyteller and comedian. Mortimer has said that the Rumpole stories were all based on current events (“Mortimer’s Musings”).\(^{24}\) In most of the stories, the English legal system is simultaneously represented as an adequate forum for achieving justice in many of Rumpole’s cases, but is also satirized for its perpetuation of class divisions, its antiquated procedures and its inability to achieve justice in the larger scheme of things. Mortimer’s frequent use of parody and irony creates a double-voicing that both “paradoxically both incorporates and challenges” (Hutcheon, *A Poetics of...

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\(^{23}\) The television series began with a pilot episode in 1975, followed by the first season of episodes in 1978, the first book adaptation in the same year, and the first radio play in 1980. In total, seven seasons of television episodes aired between 1978 and 1992, fifteen books were published (Mortimer continues to write new stories since the termination of the television series) and twenty-one radio play adaptations produced (Angelini, “Rumpole”). There have been Rumpole conventions, a “Rumpole Society” in San Francisco with over 450 members (“John Mortimer: The Guardian Interview”) – Rumpole was even popular with the British royal family (especially the Queen Mother)(“Mortimer’s Musings”).

Other television barristers appear in the very popular television series *This Life* (1996-1997, with a two-hour follow-up *This Life + 10*, in 2006), which features an ensemble cast of young barristers and solicitors navigating their way through the beginning of their careers. The lawyers live together in a house in London, and the show focuses more on their personal lives than on their professional lives. However, ample screen time was dedicated to showing the frequent frustrations and occasional victories of the latter. *This Life* captures the fears and anxieties of a young working generation, and can be seen as a coming-of-age story. Other examples of British legal series include *Kavanagh, Q.C.* (1995-2001), as well as the unsuccessful recent shows, *New Street Law* (2006-2007) and *The Innocence Project* (2006).

\(^{24}\) He also based the popularity of his creations on the character’s cynical personality and the large population of lawyers: “Well, I think in every organisation, every office, there's someone who wants to be rude to the boss, difficult, and I think then also there are so many lawyers in the world. I mean there are an awful lot of lawyers in America. And lawyers, defence lawyers the world over go through exactly the same feelings, I think, as Rumpole does in court. And then a great number of people who lead rather tough married lives” (“John Mortimer: The Guardian Interview”).
Postmodernism 11) established elements of English culture. “Rumpole and the Younger Generation” is one of the many stories that take place in the domestic setting of the Old Bailey criminal courthouse in London, and demonstrates a complicated view of the English legal system. An equally complicated view emerges in the international context, as seen in “Rumpole and the Golden Thread,” a story that takes Rumpole to a fictional African country called Neranga.

Rumpole’s world revolves around the Old Bailey, as described early in “Rumpole and the Younger Generation”:

At which point we turned up into Newgate Street and there it was in all its glory, touched by a hint of early spring sunshine, the Old Bailey, a stately Law Court, decreed by the City Fathers, an Edwardian palace, with an extensive modern extension to deal with the increase in human fallibility. There was the Dome and the Blindfolded Lady. Well, it’s much better she doesn’t see all that’s going on. That, in fact, was our English version of the Palais de Justice, complete with murals, marble statues and underground accommodation for some of the choicest villains in London. (“Rumpole and the Younger Generation” 18)

The description is rooted in local, particular details. However, it also “paradoxically both incorporates and challenges” (Hutcheon 11) English literature by parodying canonical poetry. Rumpole habitually quotes selections from the Oxford Book of English Verse, and here, the “stately Law Court, decreed” and its “Dome” are an ironic play on the “stately pleasure-dome” of Coleridge’s “Kubla Khan.” His irony also incorporates visual symbols – the “Blindfolded Lady” recalls the figure of Lady Justice, perhaps the most revered anthropomorphization of justice in Western culture. Mortimer coopts another of her names, “Justitia,” in connection with the English common law in this story, as I will discuss shortly.
The courtroom often provides a forum for the playing-out of class divisions that plague the British legal system. In “Rumpole and the Younger Generation,” Rumpole defends a young lower-class boy, Jim Timson, who has been wrongfully accused of theft. Rumpole’s frustrations with the hierarchies of the court system emerge:

‘If your Lordship pleases.” Featherstone was now bowing slightly, and my hackles began to rise. What was this? The old chums’ league? Fellow members of the Athenaeum?

‘I am most grateful to your Lordship for that indication.’ Featherstone did his well-known butler passing the sherry act again. I wonder why the old darling didn’t crawl up on the bench with Mr Justice Everglade and black his boots for him.

‘So I imagine this young man’s defence is – he wasn’t *ejusdem generis* with the other lads?’ The judge was now holding a private conversation, a mutual admiration society with my learned friend. (27)

Rumpole’s reference to the social affinity between Featherstone and the judge, and the judge’s pedantic use of Latin are two small examples of the ways in which the English class system stands in the way of justice within the world of the Old Bailey. Often, it is only the cleverness of the old barrister that can cut through the barriers to justice that he identifies. In this case, Rumpole proves Jim’s innocence by revealing to the court that he spent the evening in question in the company of Peanuts Malloy, a boy from a rival family of which the Timsons do not approve. Yet, when Rumpole wins, he also realizes that Jim may be about to embark on a life of crime. He admonishes the boy: “‘Do you think that’s what I’m here for? To help you along in a career like your Dad’s?’” (38).\(^{25}\)

Jim’s reaction does not indicate otherwise. So, although the old barrister wins the battle, he essentially loses the war.

Rumpole’s chambers are another microcosm of British class divisions. Not only do the professions of barrister and solicitor form a hierarchy within the British legal

\(^{25}\) Jim’s father is one of Rumpole’s clients, and a convicted criminal.
profession, but barristers as a group are further subdivided in terms of their distinctions and the courts in which they appear. Rumpole himself is not the most successful of barristers. When his wife Hilda’s father, C.H. Wystan, retires as “Head of Chambers,”26 despite Rumpole’s seniority and family connection, the other barristers elect Guthrie Featherstone instead (because Featherstone has recently been appointed a Queen’s Counsel). In the course of the stories, other characters move on to become judges and Queen’s Counsel. However, Rumpole refuses to do what is necessary to ascend to these positions, and constantly refers to himself as an “Old Bailey Hack” (although this is also a double-voiced comment, since Rumpole is frequently quite proud of his profession). Despite this, he retains an enthusiasm for the law and respect for its ability to achieve justice in individual cases, even if it is unable to cure overarching social problems.

Further, despite Rumpole’s dubious placement within the hierarchy of his chambers, the barrister is still relatively high in the general hierarchy of social classes. Class divisions in Rumpole’s world are often tied to concepts of family, which emerge in this exchange between Rumpole, his wife Hilda and her father:

‘Not a frightfully good address, the Old Bailey. Not exactly the S.W.1 of the legal profession.
Sensing that Daddy would have thought better of me if I’d been in the Court of Appeal or the Chancery Division, Hilda told me she thought of a master stroke.
‘Oh, Rumpole only went down to the Bailey because it’s a family he knows. It seems they’ve got a young boy in trouble.’
This appealed to Daddy, he gave one of his bleak smiles which amount to no more than a brief withdrawal of lips from the dentures.
‘Son gone wrong?’ he said. ‘Very sad that. Especially if they come of a really good family.’ (19)

26 The “Head of Chambers” is the managing partner of the barristers’ office. Barristers do not practice in large numbers. In contrast, solicitors practice in firms, which can include very large numbers of lawyers.
Of course, the Timsons are far from a ‘good family.’ In an interview, Mortimer explained his rationale behind creating the characters: “Well, the Timsons are a family of South London criminals….Really what I was trying to say is that the children of judges grow up to be judges, the children of barristers grow up to be barristers, and the children of burglars grow up to be burglars, you know, so it’s a sort of family tradition. So the Timsons are very useful to Rumpole…. [T]hey’re quite affectionate criminals really, I’m quite fond of the Timsons” (“Mortimer’s Musings”). True to Mortimer’s words, not only are the Timsons bound to their family profession, but so are judges, at least in the case of Mr Justice Everglade in “Rumpole and the Younger Generation”: “Everglade’s father was Lord Chancellor about the time when Jim’s grandfather was doing over the Streatham Co-op” (26). Of course, this concept that children are confined to their father’s profession is hard to accept in the context of current beliefs about social mobility.  

In the same story, Rumpole is faced with the decision of his own young son, Nick, who does not wish to follow in the footsteps of his father and grandfather by becoming a barrister. When Nick expresses his desire to study sociology, Hilda insists that he must study law and “keep it in the family.” However, Rumpole says to Nick, “Let’s have no more of that! No more following in father’s footsteps. No more” (48). Yet, Rumpole’s disappointment and ambivalence about his son’s decision are evident: “Nick smiled, although I have no idea if he understood what I was trying to say. I’m not totally sure I

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27 The 85-year-old Mortimer’s view of other issues also appears dated from a contemporary perspective. For example, despite the success of the previous adaptations of Rumpole, the BBC declined to produce a new adaptation in the 1990s: “Rumpole, who is the creation of Labour-supporting John Mortimer, is most obviously sexist when it comes to his wife – whom he refers to as “she who must be obeyed”, but most of his beliefs are exactly those you would expect from a barrister of his generation. The BBC didn't object to this, but instead thought that a female colleague with strident feminist views was a touch old-fashioned and out of date” (McCann).
understood it either” (48). However, while Rumpole respects and enjoys the position of the barrister, and its entrenchment as an upper-middle class profession, he is clearly willing to demonstrate flexibility in terms of his son’s career choice. Nick eventually becomes a sociology professor – hardly a far cry from his father’s profession. In this case, Mortimer’s story appears to be more about incorporating the status quo than challenging it.

However, unlike many of the stories, “Rumpole and the Golden Thread” presents somewhat more critical views of the legal system, the legal profession and English law. Rumpole travels to the fictional country of Neranga28 to represent David Mazenze, a political leader29 who has been accused of murder. Halfway through the story, Rumpole realizes that David Mazenze does not expect to win the case, and Rumpole’s part in the defence is part of a scheme to prove that the judge “has no respect for the law” (270) so that Mazenze can start a revolution. However, Rumpole manages to prove Mazenze’s innocence by the existence of a secret wife who is from another tribe. The wife provides an alibi for Mazenze – he could not have committed the murder because he was with her. The judge rules in Rumpole’s favour. Contrary to Mazenze’s expectations, the judge makes a point of stating his respect for the law: “Neranga ranks high on the list of civilized countries….We observe the rule of law. This is demonstrated by the fact that we have allowed a barrister in from England” (275). However, Rumpole realizes that his win is part of the political agenda of the Prime Minister of Neranga. Shortly after the trial, Mazenze is murdered and replaced by his younger brother as the head of the

28 Roughly based on Nigeria (Dolin 170).
29 Mazenze is head of the “Apu People’s Party” (the Apu are a fictional tribe, who are in conflict with the fictional Matatu tribe). He is also a former student of Rumpole’s, as the latter explains that he had previously undertaken some part-time law teaching at one point in his career (244).
political organization. Here, it is clear that the rule of law founders again in the face of vigilante justice. Further, it is through the legal process that a vital piece of information – Mazenze’s marriage to a woman from a different tribe – is released to the public, and leads to his death.\(^{30}\) Here, the legal system is not an instrument of justice, but rather a tool caught up in the political dynamics of Neranga. Rumpole does not understand that he has been manipulated by extralegal forces until the end of the story.

Mortimer uses irony in a way that “uses and abuses, installs and then subverts” (Hutcheon 3) the ideals of Western culture. In this story, a reference to the “Blindfolded lady” appears in the form of the name “Justitia,” which Rumpole explains to his wife: “‘She’s a sort of blind goddess, Hilda, who goes around lumbering with a sword and a blooming great pair of scales’” (241). Here, the name is co-opted by the organization “Justitia International,” which is “an organization which attempts to see that trials are fair and justice done in even further away places with stranger sounding names than the Uxbridge Magistrates Court….To lands which will still receive them (a small and ever-shrinking number) Justitia will send English barristers to defend the oppressed…” (242). However, in this case, rather than seeing justice done, the interference of the English organization leads directly to Mazenze’s death.

Principles of English common law are also simultaneously installed and subverted. Rumpole explains the crux of the titular Golden Thread as “the immutable principle that everyone is innocent unless twelve good men and women are true and certain that the only possible answer is that they must be guilty” (244). Here, it is not only Rumpole who reveres the Golden Thread, but also David Mazenze, who insists that

\(^{30}\) After winning the case, Rumpole learns that Mazenze’s supporters, the Apu tribe, “won’t move a finger for a leader who married a Matatu woman” (278).
Rumpole will have to rely “[o]n the common law of England! The Presumption of
Innocence, you know what you taught me: the Golden Thread which goes through the
history of the law. I like that phrase so much” (254). However, as Mazenze informs
Rumpole, the Golden Thread is not exactly the same in Neranga, as the “British abolished
juries in murder cases when Neranga was still ‘New Somerset’” (255). Rather than a
story about the triumph of the presumption of innocence, the title’s reference to the
“Golden Thread” is clearly ironic. Here, Rumpole and Mazenze’s faith in the “Golden
Thread” is misguided, in terms of its failure to ultimately protect Mazenze, and in their
ignorance of the negative aspects of the imposition of English law in Neranda.

Kieran Dolin argues that the story links English law with English literature, and
that it ignores the imperialist ideology inherent in these two discourses: “In adopting the
language of imperialist mythology, Mortimer is perpetuating it, even though he is not
seeking to defend the empire. Furthermore, his conjunction of literature and law in this
context cannot be detached from an imperialist past” (169). Dolin uses an example to
illustrate Rumpole’s attitude toward the relationship between English and African culture
as a continuation of imperialist discourses:

Rumpole clearly adopts the language of colonial administration and law,
albeit with mock seriousness, before his departure: ‘Hilda! Africa is
waiting. The smoke signals are drifting up from the hills, and in the jungle
the tom-toms are beating. The message is, ‘Rumpole is coming, the Great
Man of Law’” (p. 247). That this is ironically spoken does not detract
from it as a display of clichés drawn from Tarzan and other popular
cultural representations of Africa. Such texts draw on imperial ideology
and helped to propagate it by constructing stories of British heroism in the
‘dark continent’. (173)

However, I would argue that Dolin’s reading of the passage downplays its mock
seriousness – the irony with which it is spoken does detract somewhat from its display of
clichés, in that it “uses and abuses, installs and then subverts” them. Dolin ignores the parodic doubling created by Rumpole’s constant quoting. Yet, by reading the passage as a continuation of imperialist values, Dolin contradicts his own conclusion that “Mortimer’s story refashions the triumphalism of the imperial hero as a fantasy imposed through the ignorance of the complexities of post-colonial politics. With the murder of David Mazenze, the story closes where it began” (174). This seems to be a more accurate interpretation of the story.

However, Dolin again seems to be unable to come to terms with the double-voicing of the text when he concludes that “Mortimer moves beyond the praise of English cultural institutions….The court is no longer a privileged site of rationality in a riotous jungle, but the arena of a struggle for power as well as for justice. The intertexts provided by English literature and law do not afford Rumpole an adequate interpretation of the post-colonial court” (175). I would argue that rather than moving completely beyond “the praise of English cultural institutions,” Mortimer’s double-voicing both celebrates aspects of them, but also demonstrates the damage they have caused in the colonial and post-colonial context.

Further, the complexities of Mortimer’s irony become more apparent when taking into account the other Rumpole stories, in which the court is rarely a site of rationality, and in which Rumpole’s habit of uttering ironic quotations is firmly established. Dolin criticizes the fact that Mortimer’s use of “Mazenze’s secret marriage to a Matatu woman and the tragic outcome of its revelation is a type of Romeo and Juliet plot” (173). Further, Dolin implies that it Mortimer’s use of the Shakespearean plot structure is a Western imposition, and that it is inappropriate for a western author or character to refer
to a western plot when talking about another culture’s experience. However, Rumpole is a western character, after all, so there is realism in his using the Romeo and Juliet. Post-colonial writers from Africa have often used Shakespearean allusions and plots. The similarity between their use of such narrative strategies and Mortimer’s complicates Dolin’s position. Moreover, the plot of the “Golden Thread” story is essentially the same basic structure that Mortimer uses in “Rumpole and the Younger Generation,” in which Mortimer also uses the Romeo and Juliet theme. Rumpole establishes the relationship between Jim Timson and his alibi-provider, Peanuts Molloy, in court: “Your families don’t speak. You wouldn’t be welcome in each other’s houses?” The judge responds, “The Montagues and the Capulets, Mr Rumpole?” (36). Dolin is right that the canonical English intertexts take on a host of post-colonial issues in this case. However, in my view, Mortimer’s use of the Romeo and Juliet plot is not an isolated case in which he overlays a canonical Western narrative onto the African context, with racially insensitive results. Rather, this is a result, if not of formula fiction, then of repetitious elements of storytelling that take on what may be interpreted by some as inappropriate overtones, when exported into other cultures. Mortimer has written a large volume of stories, and often repeats plot elements and themes in his writing. It is unfortunate that certain basic plot structures, like the Romeo and Juliet theme, may carry cultural implications with them that become offensive to critics like Dolin.

I would argue that the other Rumpole stories are equally important as intertexts as the other works of English literature to which the story refers. Read in isolation, the story loses the background of Rumpole’s cynical view of the English court system. Rumpole’s

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31 See, for example, South African writers Solomon Plaatje, Peter Abrahams, Es’kia Mphahlele, Bloke Modisane, and Can Themba.
sense of self-deprecation and failure has rarely been stronger than at the end of this story, in which (just like in “Rumpole and the Younger Generation”) he wins the battle but loses the war. It is not the failure of the court system to achieve justice here – Rumpole has won his case – but the failure of British law to achieve order in the context of Nerandan politics. In an overall sense, the story speaks of the failure of British power in the post-colonial context. Mortimer’s conception of the presumption of innocence presents a complex view of the principles underlying British law and their functioning in this fictional African country.

**A Judge’s Respect for the Law in Domestic and International Settings**

A different approach to the tensions in applying British legal principles in domestic and international settings can be seen in *Judge John Deed* (2001-2007). The BBC’s six-year legal drama concentrates on the professional and personal life of a High Court judge. Deed is very much a liberal humanist hero. Further, his belief in his own abilities to determine the spirit of the law often leads him to clash with the letter of the law. Deed’s unconventional behaviour on the bench sometimes stems from his admiration of the continental inquisitorial system. As a domestic judge, he often twists rules in order to achieve his desired ends, and individual rights often trump procedure. In domestic cases, he seems to have little concern for precedent. However, as season six of the series follows Deed’s appointment to an international setting, conflicting messages about the law emerge. Deed’s adherence to procedural rules suddenly takes on a great importance, and he becomes a jealous guardian of the English common law.

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32 Her Majesty's High Court of Justice is part of the Supreme Court of Judicature of England and Wales. The High Court is a “court of first instance” (i.e., a trial court) that hears highly important cases.
Deed’s commitment to his personal sense of justice often manifests itself in his personalized interpretation of legal procedure and constant battles against “the establishment” in the form of other judges and senior government officials. Deed has been described as a “maverick,” whose appeal is attributed to the fact that “[p]eople want to believe that there is the kind of character who is a lone warrior for justice in a world where justice cannot be done” (Robins). In many ways, he embodies Fitzpatrick’s idea of the “the fully conscious individual of Europe who not only knows but also acts on and makes the world” (34). While wielding considerable power, Deed is presented as an intelligent, yet empathetic character whose modest upbringing (in a council house in Coventry) appears to have given him insight into the lives of many of those he judges. Deed’s many heroic qualities build to an overall view of the British judge as an effective figure for achieving justice, despite the fact that Deed often has to subvert the legal system to do so – sometimes his “maverick” behaviour crosses the line into vigilante tactics, as I will discuss shortly.

In order to achieve justice, Deed often stretches legal procedure. The series has often been criticized on this basis (Angelini, “Judge John Deed”). Deed is seen personally investigating cases, a task not normally undertaken by English judges (season two, “Abuse of Power”; season five, “One Angry Man”). One judge in a real-life murder trial even felt it necessary to warn the jury not to follow the example set by Deed

33 Deed often clashes with the Crown Prosecutorial Service and the Permanent Secretary to the Lord Chancellor's Department, Sir Ian Rochester.
34 Despite this, the series seems committed to a balanced portrayal of other aspects of the English legal system and society in general. For example, its representation of visible minorities seems realistic. There are visible minorities who are barristers, but all the judges are white, and mostly male.
35 The episode “One Angry Man” demonstrates the influence of American fictional legal narratives abroad, as it adapts the basic plot of the American movie Twelve Angry Men (1957), casting Deed in the role of the lone juror who forces the rest of the jury to discuss the possible innocence of the accused. As in the movie, the jury eventually return a verdict of not guilty.
in his capacity as a jury member (season five, “One Angry Man”): “Whatever they do on
television, it does not represent English law. You must remember that you must not
research a case yourselves. Whatever Martin Shaw might have done, it would simply
derail the whole process” (“Dami judge warns jury”).

Deed is also willing to twist procedure if he feels sympathy for one of the parties.
In “Exacting Justice” (season one), after the jury returns a guilty verdict, Deed calls the
accused to the witness box and convinces the man to explain the extenuating
circumstances that lead to the crime. He then asks the jury if they wish to “correct” their
verdict, leading them to reverse their finding of guilt. In another episode, “Hidden
Agenda” (season one), Deed’s daughter Charlie begs him to help her friend, an HIV-
infected mother who is in danger of losing her baby because she refuses to have him
tested for the disease. Deed agrees, and ultimately finds that the mother is fit to keep the
baby, but must have him tested. However, knowing that the baby is not her biological
child (she has unofficially adopted him from a friend who died of cancer), he also helps
the mother escape with the baby during the hearing so that she will not have to give him
up to the authorities. This goes beyond procedural manipulation – it verges on
vigilantism.

Some of Deed’s procedural lapses stem from that admiration he has for the
continental inquisitorial system. He is often highly critical of the adversarial system. For
example, after a doctor is acquitted of rape, Deed says to the defense barrister: “Our
adversarial system doesn’t always best suit the public, you know. Here it went seriously
wrong” (episode two, “Rough Justice”). The tension between the adversarial and
inquisitorial systems is a theme that runs through the series. In every episode, Deed
intervenes frequently in the witnesses’ testimony. He often oversteps his role as judge to closely examine the witnesses, as though regressing to his former role as a barrister. His questions often show a fair amount of bias, causing tension with the barristers. When one barrister complains of bias from the bench, Deed’s nemesis, Sir Ian Rochester, chastises him: “It’s not supposed to be conducted by your playing all the parts: prosecution, defense, judge. We’re not that much at the heart of Europe yet, thank God.” Deed replies: “Well, I’m not sure that the continentals don’t get at the heart of the truth better than we do in our system” (season one, “Exacting Justice”).

In keeping with his admiration for the continental system, Deed’s behaviour sometimes resembles the popular French juge d’instruction figure in terms of his personal investigation of cases. Deed is also physically active, able to defend himself physically, and sometimes engages in physical violence. For example, he is attacked in the courtroom when an accused jumps out of the witness box. However, Deed manages to knock the man out before the security guards arrive (season two, “Nobody’s Fool”). At one point, Deed’s daughter, Charlie, remarks to him: “You’re only Spiderman, Dad, not God” (season two, “Everyone’s Child”). However, the fact that Deed is a trial judge differentiates him from the juge d’instruction, whose real-life role actually is investigative. French representations have been based on real-life juges d’instruction whose involvement in violence is arguably more realistic than the portrayal of a High Court judge as part action hero.36

The familiar tendency in fictional legal narratives to “make it personal” is sometimes stretched to the extreme in Deed. One critic writes: “The essential premise is certainly unlikely, and has been the source of some derision from critics. Almost every

36 See my discussion in Chapter 5.
week, Deed is seen presiding over cases being prosecuted by his ex-wife or defended by his on-off girlfriend (with occasional help from his daughter), while pressure is invariably brought to bear by his ex-father in law – a senior judge – the Lord Chancellor's department or even the Home Secretary, his ex-wife's new partner” (Angelini, “Judge John Deed”). In addition to the numerous family ties Deed has in the courts, Deed further compounds his personal involvement in the cases he hears by sleeping with a number of other characters, such as Sir Ian’s wife, Francesca Rochester (various episodes in seasons one and two); a doctor he acquits of murder (season one, “Hidden Agenda”); and a fellow judge who hears a case in which Deed is a jury member (season five, “One Angry Man”). Yet, in contrast with French television, where there are extended love scenes and nudity, *Deed* offers a very British portrayal of the personal life of judges. The judge’s emotions are shown in depth, but very little time is devoted to the physical aspects of his personal affairs. Here, the judge is represented as a human figure, but one due a certain amount of respect and privacy in his personal relationships.

Deed’s promotion to the Court of Appeal in season six departs from the usual trial court setting. The trial’s inherently dramatic structure has been a much-discussed topic (see, e.g., Clover). In many jurisdictions, appeal hearings do not involve live witnesses. The lawyers argue errors of law, fact, or procedure that have already been decided in the trial. Appeal arguments are highly intellectual, and lack the possibility of tense cross-examinations or tearful witness breakdowns. Fortunately for *Deed*, the Court of Appeal in England and Wales has jurisdiction to hold a “re-hearing” of certain cases. Thus, the

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37 His wife and ex-girlfriend also argue against each other in one case, and once his daughter becomes a qualified barrister, all three appear in one case.
series preserves the necessary element of live witnesses and human emotion in the courtroom.

In “War Crimes” (a two-part storyline in season six), Judge Deed is simultaneously involved in a hate speech case at the Court of Appeal, and also judges a war crime on at the International Criminal Court (“ICC”) in The Hague. The latter is a trial, and provides more dramatic action when balanced against the appeal argument. The Hague trial dramatizes recent legal and political issues surrounding the Iraq war.38 Private David Clark, a British soldier is charged with the war crime of willful killing in the shootings of eleven Iraqi women and children.39 As a consequence of Private Clark’s killings of the Iraqi civilians, other British troops are being attacked in Iraq in retaliation. The episode is very much an exercise in fiction, as the actual ICC was scheduled to begin its first trial in June of 2008 (i.e., a year and a half after the airing of the episode).40

“War Crimes” underlines two major points about individual rights, and shows Deed as a judge grappling with serious issues that are relevant to current events. First, Deed underlines the necessity of determining individual responsibility. Private Clark’s defense team (which includes Deed’s ex-girlfriend, Jo Mills) argues that his response was an automated reaction to a situation for which he was not ultimately responsible. Further,

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38 The story aired in January 2007, a month before Tony Blair announced the withdrawal of British troops from Iraq.
39 While the soldier in this storyline is ultimately found not guilty, in 2006 Corporal Donald Payne pleaded guilty to “inhumanely treating civilian Iraqi detainees” in the torture and killing of hotel receptionist Baha Mousa, and the torture of ten other Iraqis. Six other soldiers were cleared of charges (Smith).
40 The first accused to be tried by the ICC, former Democratic Republic of Congo militia chief Thomas Lubanga, is currently being held in custody. The prosecution is appealing the ICC’s July 2, 2008 decision to free him on the basis that he would not be granted a fair trial. As of August 2008, the ICC is investigating four “situations” (Northern Uganda, the Democratic Republic of Congo, the Central African Republic and Darfur) and has five accused in custody (www.icc-cpi.int). All situations that the ICC is investigating are African situations, and all the accused so far have been African nationals whose alleged crimes have occurred in the context of African conflicts. I would hazard a guess that the writers of the episode chose a situation involving a British national to avoid the political implications of commenting on the African situations.
they urge him: “The government shouldn’t have sent you there…. You’re trained to kill. Your response was appropriate.” Deed says of the case: “I can’t ignore the possible loss of life that might follow our decision. But will more people be killed if we decide this, and less if we decide that? The threat is purely hypothetical. You can’t compromise the principle of fairness and justice for everyone because of what might happen. If we do, what are we fighting for? Society only changes when the individual changes.” In deliberating the case with the other two judges of the panel, Deed again underlines the need to distinguish between individual and government responsibility:

_Deed:_ This court is about individual responsibility. It indicts people who allegedly have done terrible things to other people.

_Judge Elimina:_ This is what your government has done.

_Deed:_ Then take your indictment and them to the International Court of Justice. Put the UK in the dock, like Israel or Serbia. This case is about one frightened young soldier….

Numerous other characters voice their disapproval of Britain’s participation in the war, demonstrating the close connection between law and politics. As one of the prosecutor characters says, “Law is politics. People must adhere to the rules made by legislators.” Deed’s adherence to his role in determining individual responsibility in this situation differs somewhat from his role in the English courts. Here, in the international context, he is more careful not overstep his role.

The second major point made about individual rights in “War Crimes” is that legal procedure safeguards individual rights. In court, Deed underlines the need to adhere to the rules of evidence:

_Deed:_ The truth has to be arrived at within a set of rules.

_Judge Previn:_ Rules may be adapted.

_Deed:_ The rules of evidence exist to ensure safety of information used in court, without that them she could get her information by hypnotism….

We’re examining whether the defendant adhered to a given set of rules in
a tense and dangerous situation. We won’t do that if we have a free for all in here.

*Judge Previn:* The prosecution will respect Judge Deed’s wishes.

*Deed:* They’re rules, not my wishes.

This is a somewhat surprising line for Deed to take, given that he so often bends the rules of legal procedure in the High Court. Clearly, Deed will use procedural rules in order to benefit the individual he favours. He continues to fight voraciously for adhering to the rules:

*Judge Previn:* In Rome, we do as the Romans do. Here, we can admit evidence in violation of the statutes of Rome, or even in violation of human rights law. It must be substantially unreliable.

*Deed:* Under English common law we play tightly by the rules for a very clear purpose.

Undoubtedly, the show’s writers are aware of the relative scarcity of applicable statutory provisions. The relative procedural indeterminacy of the *Rome Statute*, which governs the ICC, and the power it gives to its judges to interpret the ICC is much less rule-based than the English legal system. Here, Deed takes the opportunity to emphasize the superiority of English law, but only in contrast to the indeterminacy of the ICC. It is in this context that the value of the concept of the rule of law emerges for Deed. Here, the figure of the judge demonstrates the tension between law and justice. In the national context the presence of rules appears to hinder justice, while in the international context it is the lack of rules that impedes justice. In both contexts, Deed consistently represents

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42 Article 21 of the *Rome Statute* provides:

(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
justice, but it is interesting that his relationship to the rules changes – he is a maverick in the national context, and a stickler for rules in the international context. The series diverges somewhat from the fascination with the lawyer figure in Anglo-American culture. Here, barristers appear frequently as supporting characters, but in this case, it is the figure of the judge who represents the ideal protagonist, and whose personal life acts as a touchstone for larger issues in contemporary life.

**The Failure of Law and Feminine Intuition**

A much darker picture of the legal system exists in the novels of lawyer-author Frances Fyfield, where the tension between law and justice emerges as a definite questioning of the law’s ability to produce justice. Yet, despite the negative portrayal of the legal system, Fyfield’s two female lawyer characters, solicitors Helen West and Sarah Fortune, are portrayed as intelligent, independent women despite leading problematic lives. Helen’s character provides a contrast to the overwhelmingly male-dominated fictional legal narratives, but also contrasts with the trivialized portrayal of female lawyers many other fictional legal narratives. However, law does not necessarily provide the answer in Fyfield’s novels. While the intelligence of Fyfield’s female solicitors aids in the solutions of the crimes that occur, there are often many other factors

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43 Fyfield has written six Helen West novels in total. Four of these, *A Question of Guilt* (1993), *Deep Sleep* (1999), *Shadow Play* (2002) and *A Clear Conscience* (2002) were also adapted for television. Fyfield also has a series of five novels based on fictional solicitor Sarah Fortune.

For other examples of British female lawyer characters, see Margaret Murphy’s *Weaving Shadows* (2004), and, as mentioned earlier, Natasha Cooper’s barrister Trish Maguire series (nine novels from 1998-2008).

44 Fyfield stated that her work gains its power because she writes about “damaged people”: “Dark suits me…It follows the rule of telling a good strong story -- none of this existential angst” (Deziel 35). The character of Sarah Fortune seems particularly damaged. One of her “quirks” is that, in addition to her job as a solicitor, she is also a part-time prostitute.

45 Christine Anne Corcos notes that female lawyers are no longer rare in American popular legal culture. Not all female lawyers in American popular culture are as trivialized as, e.g., Ally McBeal, but representations still differ from those of male lawyers in terms of the lack of positive, heroic images of women; these are still few and far between.
at play in the resolution of conflicts in her novels. Fyfield’s novels thus represent a departure from certain conventions of the legal thriller genre, in which the cleverness of the protagonist usually leads to the solution of the crime.

This is exemplified in Fyfield’s 1991 Helen West novel, Deep Sleep. There, in her role as a crown prosecutor, Helen investigates a case in which a woman in her mid-forties, Margaret Carlton, mysteriously dies of a chloroform overdose. Helen suspects that the death is not accidental or self-administered, as claimed by the woman’s husband, Phillip Carlton. Through the investigation, Helen begins to realize that Phillip is the true murderer. Philip, it turns out, has murdered Margaret because he is secretly in love with his assistant, Kimberley Perry. Rather than aggressively pursuing the murderer, as many other fictional lawyer heroes would, Helen takes a more passive role. The male police officers (Kimberley’s ex-husband, Duncan Perry, and Helen’s boyfriend, Inspector Geoffrey Bailey) bring about the ultimate resolution of the problem, capturing Philip and preventing him from murdering Kimberley. Helen’s failure to act is bound up in the narrative with the overall failure of the law, and also with Helen’s instinct, which Fyfield develops as a female characteristic.

Fyfield draws heavily on the strong tradition of British detective fiction, and particularly on the work of Agatha Christie. In a comment in The Guardian, Fyfield writes: “God bless Agatha, for the role model she thus created, as well as for her real self. She established a fascination for the female crime-writing species that has stood others, such as me, in good stead” (33). Like Christie’s detectives, Helen relies on her intellect in solving crimes. However, while she does some of her own investigation, Helen is rather shy about exploring on her own. Early in the case, “something akin to shame, but
definitely unashameful, made her blush. She regretted this necessary secrecy, this subterfuge to hide a nature which was curious but cautious and still afraid of criticism. She suffered as well from that guilty fear which afflicts any reasonably conscientious person who has lied in order to leave work indecently early” (68). This sort of attitude toward investigation is hardly what one would expect of a Poirot, or even a nosy Miss Marple. Further, there are few fictional lawyer-heroes who would express this sort of reticence about investigation. Yet, investigation is not a usual part of the lawyer’s job, and the lawyer-as-detective role is one that departs significantly from reality. Despite Fyfield’s being inspired by British crime writers, as I mentioned earlier, she is not afraid to diverge from generic conventions in order to offer a more true-to-life portrayal of her characters. Helen’s character offers a more realistic image in terms of the actual role of the lawyer than can be found in many fictional legal narratives.

Realism is also aided by Fyfield’s choice of the less glamorous occupation of solicitor (crown prosecutors in England can be either barristers or solicitors). Helen’s work duties reflect the current breakdown in the barrister/solicitor distinction in that she is responsible for court appearances as well as preparing cases for trial. However, there are times at which the tendency toward realism means a surprising disconnection on Helen’s part from the solving of the crimes in the files that come across her desk. Helen is often only tangentially involved in bringing her cases to their final resolution, and in

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46 Helen’s role as a public prosecutor also reflects the realities of practice with which women are faced. In the UK, women are underrepresented in private practice, but overrepresented in the public sector. In 2005, a newspaper article reported: “The law is one of the most gender-biased of all UK professions, with female solicitors earning little more than half of what their male counterparts take home, according to a major new study of legal pay. …Three times as many men as women become highly paid partners in firms of solicitors, and even when they do get promoted, women earn less, says the analysis” (Dobson). The situation is slowly improving – slightly more women were admitted into London partnerships in 2008 (Kowalski). Helen seldom encounters explicit gender discrimination, but femininity is a constant issue in a way, while masculinity is not constantly considered in male-authored legal thrillers.
some instances it seems as though events are unfolding around her without much involvement on her part. Fyfield uses multiple points of view (in both the Helen West and Sarah Fortune novels), a technique that highlights the unfolding of events without necessarily involving the lawyer-protagonist. The significance of this is that it flags the fact that the lawyer’s part in solving a crime is sometimes tangential. The technique arguably offers a more realistic portrayal of events.

Helen does appear to have a mastery of the law – but it seems as though many of the circumstances of her cases are not resolvable through legal means. In Deep Sleep, there is a strong sense of failure, both of the law and of the lawyer figure to effect just outcomes. Helen’s frustrations with the law are often connected to her frustrations with her own instinct. In an internal monologue, we read: “Tell me my judgement of human nature is not as rotten as it seems. And the law which pays my labours not really such an ass” (140). Later in the novel, Helen’s boss denies her permission to rely on a certain chemist as an expert witness, because of the chemist’s suspicious personal background, leaving Helen resentful: “Sharpen the instinct and pretend the law is not really your pet blunt instrument designed to miss the target. Tell me something new, Helen was thinking. Tell me the law is not such an unwieldy instrument that we cannot catch a murderer by legitimate means and we have to stage a trial like a strange musical, with everyone’s face painted whiter than white to mirror the cleanliness of their souls” (151).

As is often the case in women’s fiction, relationships are more central to the narrative. Helen’s boyfriend, Inspector Bailey, has a much larger role to play than many of the male lawyers’ girlfriends. Her frustration is also expressed through Bailey’s internal monologue: “If only I could act on instinct and be furious at the imposition of other people’s rules, other people’s orders which I might have been taught to respect even when they are ludicrous. I might have an ounce of Helen’s anxiety, her fury with the formalities of law which get in the way of what is perfectly obvious” (174). Helen’s dissatisfactions with the criminal justice system become more caustic by the end of the series of novels. In the last novel, Without Consent (1996), Helen views her office as “an environment devoted to the creation of nothing but hierarchies. The pursuit of justice was an unprofitable sideline” (299). Her law
Thus, it is not simply the formalities of the law that hinder the resolution of conflicts, as in *Judge John Deed*, but, as in Dias’s *The Rule of Law*, the overall inability of the law to bring about justice. Helen’s view of the law is bleak, given the law’s relatively important role in her life. This sense of failure is a believable aspect of her character. Further, Helen’s instinct, while helping to discover the identity of the murderer, does not actually ultimately help to resolve the case.

Throughout the novels, intuition is constructed as a feminine quality. For example, Bailey discusses Helen with one of his colleagues:

‘Shame. She did seem, your lady…Miss West…She’s not a Ms, is she? I always get worried when they call themselves Ms. Sounds like a wasp. Anyway, she did seem to have got a bee in the bonnet.’

Bailey felt more than a little guilty. Talking about Helen felt like treachery, but needs must: he was loyal, but pragmatic.

‘Well, yes, she has a bit. The bee in the bonnet I mean, but she has this uncanny knack of being right.’ (110)

Yet, there are plenty of male-authored narratives in which intuition is not made out to be a feminine quality, but simply something essential to detection. Yet, unlike Judge John Deed, her frustrations with the law do not push her over the line to vigilante behaviour. In fact, she does the opposite. Despite her strong suspicion that Philip Carlton has murdered his wife, she grudgingly accepts her boss’s decision not to use her chemist as

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clerk, Rose, sees problems in “the Code for crown prosecutors, which so clearly underlined the difference between truth and pragmatism. The Code said that prosecutors should only initiate those cases where they considered there was a reasonable prospect of securing a conviction. That meant, in Rose’s eyes, that they had to consider the likely result before considering the facts. It seemed outrageous to her that these middle-class wankers should base their decisions on second-guessing what the jury, or the defence, would do; taking prejudice, skill and incredulity into account before they were even expressed” (*Without Consent* 303).

49 E.g., in the French television show, *Les Cordiers, juge et flic*, Cordier Sr. (the detective) points to his nose, saying, “le flair.” He indicates his intuition, a trait that is contrasted against Cordier Jr.’s (the juge d’instruction) reliance on logic and reason (see my discussion in Chapter 5).
an expert witness. Further, Helen tries to dissuade her boyfriend, Bailey, when he expresses his concern about Kimberley:

‘Kimberley Perry. She didn’t answer her phone to Duncan soon after they’d all been herded out. When I tried half an hour ago, the phone was engaged.’

‘What will you do?’

‘Go and look, as soon as I’m allowed. Got to wait: I’m not in charge. In a minute or so.

‘No,’ said Helen. ‘You will not, do you hear me? You’ll do no such thing.’

(166)

Here, Helen is not in danger herself, and does not rely on male strength, but is content to maintain the status quo while others put themselves in danger in order to solve the case. Further, her concern for her partner’s safety clearly trumps her concern for Kimberley’s safety. I can think of no fictional legal narratives in which the reverse situation occurs, where a hero not only fails to act, but is so concerned for his domestic partner that he dissuades her from aiding a potential victim, only to have her save the day. This is not surprising, given that the legal thriller is a male-dominated genre, both in terms of the authors who write legal thrillers and their protagonists. Again, Fyfield is not afraid to depart from the conventions of the genre in order to stay true to her characters, despite the negative messages about gender that readers may garner from her novels.

At the end of Deep Sleep, Helen’s final thoughts on the law are far from subtle:

“‘Christ, the law’s stupid. And slow. We mess around with statements and meetings and decisions and proof and personalities, while Hell freezes.’ There was a hard edge of bitterness to her voice. ‘And then it takes a drunken bum [Duncan Perry] to do what we couldn’t. It makes me ashamed to be what I am’” (193-4). Her comments may seem at

50 Describing American popular culture representations of female lawyers, Corcos writes: “generally her physical limitations require that some helpful male comes to her real (as opposed to intellectual) defense” (1235). Corcos also notes that female lawyers often rely on males for intellectual help as well, but in this case, Helen can fend for herself mentally. However, in other novels (see, e.g., Shadow Play), Helen is rescued physically by men.
odds with the passivity she demonstrates earlier, but while Helen rails against the law, 
she is ultimately uncomfortable acting in any way that goes outside the boundaries of her  
role as a lawyer. In this context, she is talking about her role as a lawyer, but one also  
wonders whether her comments could also apply to her perceptions of her role as a  
woman, or as a human being.

**The Individual and Collective Failure of the Legal System**

Perhaps the most critical view of the legal system is found in David Hare’s  
*Murmuring Judges* (1991). Hare is a noted left-wing dramatist, known for his critique of 
social injustices, and he has often been compared to Harold Pinter, Edward Bond and 
Howard Brenton. *Murmuring Judges* is the second installation in a trilogy that censures 
three different cornerstones of British society. The first, *Racing Demon* (1989), focuses 
on the hypocrisy of the Anglican Church, while the last, *The Absence of War*, centres on 
the Labour government. *Murmuring Judges* takes the legal system as its subject matter.51

The play offers criticism of a specific period:

Hare’s image of Britain – suffocating under the weight of a glacial bureaucracy –  
gave him unlikely, and unconscious, common cause with the new leader of the  
Conservative Party, Margaret Thatcher. She also saw Britain suffocating; she  
also saw the problem as partly located in an old, tired, fixed way of doing things. 
She might have ascribed this to a different cause…but both Hare and Thatcher  
saw the state as a crushing weight on the country, deforming the lives of the  
people in Britain. (Pattie 366)52

However, Hare levies his criticism on several levels, from the individual to the collective, 
presenting issues as products of personal self-interest on the part of individual lawyers

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51 Hare notes that the play’s title is taken from an antiquated Scottish law, under which it is illegal to 
verbally insult the judiciary (“Author’s Note”).
52 Roughly contemporaneous to *Murmuring Judges*, Peter Goodrich writes in “Critical Legal Studies in  
critical legal studies lacks any recognized domestic tradition of radicalism or of legal non-conformism upon  
which to draw” (196). Goodrich noted the importance of attempting to remedy the “the marginality, low  
status and limited impact, of critical legal studies in England” (200).
and judges, in the most concrete sense; as the institutional failure of the legal system, in collective terms; and on a larger scale, as the failure of British society as a whole. However, despite launching a scathing denunciation of the individual actors who make up the legal system, like the other British writers examined here, Hare refrains from criticizing the substance of the law or its underlying principles.

The play centres on the plight of Gerald McKinnon, who is in the process of being sentenced to five years in prison as the play opens. It becomes clear over the course of the play that McKinnon’s role in the crime did not merit the length of time he receives. A single young barrister, Irina, has enough concern about Gerard to research the situation behind his sentencing. Gerard’s crime, his first offence, was to drive the getaway car while his partners in crime stole two hundred leather coats. For this, he received a mere £800. Irina later learns that the police blackmailed Gerard’s associates by planting a fake bag of drugs on their property, and then threatening to add years to their sentence if they didn’t give up information about another gang. Only one of the police officers, Sandra, has moral qualms about the blackmail strategy, in which she did not participate. In the end, the senior barrister working with Irina, Sir Peter Edgecomb, argues Gerard’s appeal without reference to the blackmail plot. Instead, he makes a half-hearted plea for clemency on sympathetic grounds, resulting in a mere six-month reduction of Gerard’s sentence.

Hare uses McKinnon’s appeal process to highlight the pitfalls of the three branches of the legal system: the judiciary, the police and the prisons. Yet, even within these three branches, Hare criticizes both individuals and the system as a collective entity
for the failure to achieve justice. His negative opinion of the individuals who make up
the legal system is clear from the quotations with which he prefaces the play:

So long as a judge keeps silent,
His reputation for wisdom and impartiality remain unassailable.

Lord Chancellor Kilmuir

Professional people have no cares
Whatever happens they get theirs

Ogden Nash

Indeed, the play dramatizes these two quotations. Mr. Justice Cuddeford, the main
representative of the judiciary in the play, has developed his own rationale for keeping
his mouth shut, which he expresses to the Home Secretary during an elaborate dinner at
Lincoln’s Inn:

Home Secretary: An independent judiciary is perhaps the most important bulwark
against chaos this country has. (He looks Cuddeford in the eye.) But we’ve
nowhere to put all these bloody prisoners you keep sending us….And that is
something you must take on board.
(Cuddeford just looks at him.)
Cuddeford: Yes.
Home Secretary: Why can’t you see that?
Cuddeford: We do. (He moves towards him, smiling, quiet now.) We do, Home
Secretary. But truly it is your problem not ours.
(Before the Home Secretary can respond, he goes on.)
You see, just think, if for one single moment, when I’m at work in my court, if I
begin to consider…if I ever consider what prison is now like…then I cannot fairly
administer justice. Because my head is full of what we may call the failings of
society. …(He shakes his head regretfully.)  Which are truly not my concern.  (He
looks at the Home Secretary.)  It’s actually dangerous. If I and my colleagues
begin to deceive ourselves, if we fudge our principles, if when the accused stands
before us, some extraneous factor, however pressing, makes us pretend that crime
is not crime, and should not be punished, then the judges become an instrument of
government convenience.  (He smiles.)  And, as you said earlier, that is not what
you want.  (53-4)

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53 There is only one other judge, who has only two lines at the beginning of the play, and is an unnamed
character (referred to only as “Judge”) (2).
54 Cuddeford’s statement also demonstrates Foucault’s assertion that there is “an increasing difficulty in
judging, as if one were ashamed to pass sentence” (Discipline and Punish 304). Further, the judge’s
attitude demonstrates Foucault’s notion that “the activity of judging has increased precisely to the extent
that the normalizing power has spread” (304). Yet, Murmuring Judges is a condemnation not only of the
actual judges, but also of the others: the lawyer-judges, the police-judges and the prison guard-judges are
This is all the justification that Cuddeford is willing to offer, although it is clear that Hare’s point in the play is to demonstrate exactly how pressing extraneous factors can be, given the circumstances leading up to Gerard’s involvement in crime, as I will discuss shortly.

Given the play’s title and the first quotation, Hare appears to be pointing his finger most clearly at judges. However, lawyers are equally, if not more blameworthy in the play. Sir Peter embodies the self-interest of the professional person described in the words of Ogden Nash. When Irina begs Sir Peter to initiate a further investigation into Gerard’s case, he declares, “What did I tell you? Bloody criminal law! … Touch anything criminal and there’s always a mess” (80). He refuses to take any further action, exhibiting an obnoxiously elitist attitude toward his client, as he expresses to Irina:

Sir Peter: He’s an ordinary, slightly sub-average human being who has landed himself in a damn stupid mess.
Irina: Sub-average?
Sir Peter: Of course he’s sub-average.
Irina: How dare you say that?
(Sir Peter smiles, enjoying himself.)
Sir Peter: Think about it, Irina. It’s not such a terrible thing. I hate to have to tell you, it’ll come as a shock to you, but, by definition, sub-average is what nearly 50 percent of the entire population is fated to be….Look, for God’s sake, it’s obvious he’s lying. (83)

Also, Sir Peter is as resistant to changing the status quo as Cuddeford, ultimately refusing to help Gerard: “Because I’m not a crusader. It’s not in the brief. Nor should it be. We shouldn’t be…soggily compassionate about every petty larcenist we’re hired to represent. Indeed it’s actually dangerous. Because the fact is…your judgement then goes” (87).

versions of the “teacher-judge, the doctor-judge, the educator-judge, the ‘social-worker’-judge,” all of whom Foucault described as “judges of normality” (304).
Clearly, as individuals, both Cuddeford and Sir Peter exhibit qualities of extreme self-interest that lead directly to Gerard’s misfortune.

Scenes featuring the judge, the lawyers, the police and the prisons also demonstrate the dysfunctional and unjust nature of the legal system as a collective entity. Karen C. Blansfield identifies the “isolation and alienation” (37) of the judiciary, the police and the prisons as the major theme of the play: “[t]hey neither communicate or connect, nor do they interact or cooperate” (38). While Blansfield touches briefly on the importance of the individual’s responsibility for the failure of the legal system, she characterizes the problem more as a systemic issue. I would argue that the problem of communication is a byproduct of the larger issue: the lack of care that any individual legal agent has for the efficient and just operation of the legal system, not to mention concern for the accused. While the isolation and alienation of the judiciary is one of Hare’s concerns, his criticism goes much deeper than the separation of the different sections of the legal system. If the problems with communication were solved, many of Hare’s criticisms of the legal system would still exist. Not simply isolated and alienated, the judiciary and the Bar are portrayed as actively extravagant, caught up in their own antiquated rituals and the gratuitous spending of money. While Gerard sits in prison, Cuddeford enjoys roast venison at a lavish dinner at Lincoln’s Inn and describes the excesses of the legal profession:

Cuddeford: …As you know, we have a system whereby law students have to eat dinners to qualify. 
Home Secretary: I’ve heard that. 
Cuddeford: They have to eat twenty-four dinners each. We were proposing to abolish this requirement as outdated. But then we found that without this, so to speak, ready-made pool of captive consumers, the entire kitchen effort would not be economic. 
Home Secretary: That’s tricky.
Cuddeford: Hence we would not be able to give ourselves lunch. (51)

Irina later takes her senior barrister, Sir Peter Edgecomb, to task for such conduct: “All this behaviour, the honours, the huge sums of money, the buildings, the absurd dressing-up. They do have a purpose. It’s anaesthetic. It’s to render you incapable of imagining life the other way round” (85). Irina’s censure makes Sir Peter uncomfortable, but does nothing to change his behaviour.

Hare also addresses the self-interest of barristers in maintaining their long-standing monopoly on court appearances. Margaret Thatcher was responsible for proposing certain reforms in the legal profession in the late 1980s, which led to the dissolution of some of the distinctions between barristers and solicitors. She proposed that both professions should be able to represent clients in court (traditionally the domain of barristers) and deal directly with the public (historically a responsibility belonging to solicitors) (Lohr).55 The initial reaction to these reforms surfaces in the play:

Sir Peter: People need to understand just what a threat to justice the new legislation might be.
Cuddeford: Indeed.
Sir Peter: If we were to merge the functions of barrister and solicitor, if any move were made to dismantle the specialist Bar, I don’t think the public begin to appreciate just how disastrous the consequences would be.
(Cuddeford looks at him a moment.)
Cuddeford: No.
Sir Peter: We started a fund-raising campaign about four days ago.
Cuddeford: How much have you raised?
Sir Peter: One million. (6-7)

While this passage offers a satirical view of the profession’s self-interest in maintaining the status quo, the debate that raged over these issues in the 1990s was characterized as a “bloody battle,” prompting one journalist to write: “The Bar sees it as a fight for its very

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55 Solicitors gained standing in certain courts in 1990, and have been gradually been granted the right to appear in high courts in certain instances more recently. In 2004, barristers were granted the right to deal directly with the public.
survival, while solicitors see themselves as a David fighting a Goliath of restrictive practice” (Toynbee).

However, Hare’s criticism extends beyond the legal system, to a critique of the class structure and poverty issues that lead Gerard to commit the crime in the first place, and that contribute to the legal system’s lack of concern for fixing injustices. Hare paints Gerard as a sympathetic character, caught in an unfathomable situation through no real fault of his own. Gerard explains that, after immigrating to England from Ireland two years previously, he worked as a manual labourer, then got a girl pregnant (39-40). He continues: “…so I got a job as a hospital porter. But we could only get a room above a pub. The noise was dreadful. And the first child … (He hesitates.) Perhaps you’ve heard this … Well, the child wasn’t right” (40). After taking a second job, Gerard describes his feelings of hopelessness regarding his financial situation: “I was thinking, you know, it’s like the water’s up to here … . (He draws a line across his neck.) One big wave and I’m gone. Every week I just about survive and no more. Then Barbara was pregnant again. I was asked to do this job, I thought, OK, just the once. What everyone needs is one lump of money. And the waves will only be up to my chest” (40). For the £800 he received for this job, Gerard’s punishment is five years in jail. However, it is clear in the context of the play that Hare’s criticism is not aimed at the substance of the law, but at Justice Cuddeford, for giving him an unduly harsh sentence, and Sir Peter, who does not care enough to ensure that Gerard receives more fitting sentence in the first place. A beating Gerard receives from other inmates compounds his institutional punishment.
Gerard is an individual example of a wider societal chaos, as expressed by Sandra, a member of the police: “You see, it’s all a mess. That’s what it is, mostly. If you take the charge room, for instance, there’s maybe thirty or forty people arrested in a day. Most of them are people who simply can’t cope. They’ve been arrested before – petty thieving, deception, stealing car radios, selling stolen credit cards in pubs. Or not even that. Disturbing the peace. Failing to appear on a summons….Fifty-fifty fights in clubs which are nobody’s fault. Crimes of opportunity. Not being able to resist it. Then going back, thinking I got away with it last time” (15). Sandra’s description places less blame on criminals as individuals, and more responsibility on a society that dooms them to failure. However, while Sandra’s comments indicate many other social problems contributing to crime, Hare focuses his criticism in this play on judges and lawyers for their extravagance and their lack of compassion, rather than calling for reforms in other areas, such as education, employment or other social assistance programs.

The play garnered negative reviews for its sometimes heavy-handed didacticism. Hare is guilty of the violating one of the most basic rules of writing: “show, don’t tell.” The play’s lack of success is at least partly due to its lack of dramatized scenes and heavy reliance on conversations between the characters for information about the legal system. Instead of dramatizing the issues, Hare puts them directly in the mouths of his characters. For instance, Irina states:

It’s the system. We’re all in different compartments. The judges used to visit the prisons in the old days. But now they say it affects their independence. If they knew what the prisoner was in for, it might affect their judgment.

…

If you think about this country, what do they do well? They’re good at thatching cottages. They serve brilliant cream teas. They’re the best gardeners in the world. Oh yes, and one more thing, it’s a real talent they
Rather than having the characters state opinions and facts, Hare’s play may have been much more effective if it had found a way to allow the characters to act out these observations. Yet, despite this aesthetic or dramatic flaw, many of the actual insights articulated in *Murmuring Judges* appear to be valid, and the problems they point to remain unresolved seventeen years after the writing of the play. A report from the British Home Office states: “In England and Wales there were 124 prisoners for every 100,000 members of the general population in 2000. This was the second highest among western European countries. Only Portugal (127) had more prisoners relative to the population. Russia and the United States have the highest rates in the world, some six times higher than those in Europe, Canada and Australia” (1).56

Yet, for all of its severe criticism of the British legal system, the play stops short of criticizing the actual substance of the laws that convict Gerard. Like so many other fictional legal narratives, the problems appear to lie with the process-oriented elements of the legal system. The mistakes made in the trial and the court’s ignorance about the extenuating circumstances are attributable to the blindness of the judges, the greediness of the lawyers and the incompetence of the police. As individuals and as collective entities, all three branches of the legal system fail to deliver justice. Hare appears to share the view of Gabel and Harris (discussed in Chapter 2), that the hierarchical nature of the legal system disempowers the poor. However, the play stops short of criticizing

56 Figures posted on the current website of the Office for National Statistics (www.statistics.gov.uk) indicate that the prison population is on the rise. A chart recording the number of prisoners from 1981 to 2003 shows the prison population steadily increasing, peaking at “the highest annual figure ever recorded” in 2003. By 2008, the numbers have increased significantly. In February, the BBC reported that jails are beyond “operational capacity,” and “the total is also 8,000 times higher than the Prison Service’s own assessment of what would comprise a “good, decent standard of accommodation” in uncrowded conditions” (“UK Prisons Now ‘Over-Capacity’”).
the underlying basis for the existence of the legal system, and does not reflect Gabel and
Harris’s assertion about “diverse locuses of state power that are organized for the purpose
of maintaining alienation and powerlessness. In this perspective the lower state courts,
for example, are designed primarily to provide administrative control over the minor
disturbances of everyday life in local communities in order to maintain social order at the
local level” (377; see Chapter 2). Further, Hare reserves judgment on the substance of
the law. Not once does he criticize the validity of the principles underlying the criminal
justice system, which is remarkable, given his scathing critique of the individual and
collective elements of the legal system. His portrayal of judges and lawyers is easily the
most negative of the representations studied in this chapter.

Conclusion

The fictional legal narratives studied in this chapter present deeply complex views
of the legal system, and several of them engage complicated theoretical concepts through
the individual figures of lawyers and judges. Many contemporary British writers present
cynical views of the legal system, questioning its ability to bring about justice, and some
introduce characters who resort to vigilante means when the law fails to deliver the
desired results (e.g., The Rule of Law, Judge John Deed). Missing from the range of
images studied in this chapter is the optimistic view of the law in American popular
culture, as exemplified by Atticus Finch and continued in many American television
drama series. The closest the British have to offer to the “virtuous defender” is perhaps
Judge John Deed, whose vigilante tactics contrast starkly with Atticus’s stand against
vigilantism in To Kill A Mockingbird. Further, rather than the bright images of lawyers
effectively solving cases on American television, the predominant image of the British
lawyer on television is arguably still the cynical, ironic Rumpole. Yet, in the face of the dark tones of British representations, the principles underlying the legal system remain generally unscathed (with the exception, perhaps, of the Rumpole stories). The concept of the rule of law is, if not revered (e.g., in *A Man for All Seasons*), then untouched by the harsh criticism that certain writers hold for other aspects of the legal system (e.g., in *Murmuring Judges*).
Chapter 4

The “Anxiety of Influence”:

“Soft-boiled” Anthropomorphizations of Canadian Law

Canadian culture has long struggled against a perceived inferiority in relation to American and European cultures, but no other culture seems to provoke the kind of “anxiety of influence” that Canadians face when confronted with American popular culture. Katherine Monk begins her study on contemporary Canadian film with a discussion of Canada’s colonization “not by our European ancestors, but by American popular culture” (3). Linda Hutcheon criticizes the “common view of Canada as a kind of cultural backwater, always copying what the Americans do, twenty years too late” (Hutcheon, The Canadian Postmodern 2). The tensions surrounding fictional legal narratives are no exception. Admittedly, Canadian examples are relatively few in comparison to the American body of legal thrillers and other fictional legal narratives. In the wake of bestselling American authors John Grisham and Scott Turow, and popular television shows like *Ally McBeal* and *Law and Order*, it is difficult to even discuss Canadian popular legal culture without reference to our neighbours to the south.

We share the American fascination with the figure of the lawyer, but Canadian writers have responded creatively to the often-overwhelming influence of American legal thrillers and courtroom dramas by using innovative techniques. Clearly, the reaction of Canadian fictional legal narratives to American cultural influences varies from work to work. Certain Canadian texts offer postmodern responses to the cultural influences of more established cultures (e.g., Margaret Atwood’s *Alias Grace* and Andrew Pyper’s *Lost Girls*). Others, such as the novels of William Deverell, show a trend toward “more
subtle, more psychological, more caring” characters (Skene-Melvin). Still others have also found unique ways to “inflect” existing American genres (e.g., as the television show Street Legal has done). In general, our fictional legal narratives show signs of Canadian artists attempting to define our culture as distinct – regardless of whether it is distinctly English- or French-Canadian (e.g., Gratien Gélinas’s Hier, les enfants dansaient). Further, almost all Canadian fictional legal narratives present multicultural characters and local settings as markers of Canadian identity.

Ironically, American scholars perceive the study of law and culture as marginalized vis-à-vis other disciplines. Austin Sarat discusses this marginalization in terms of the field in general, and of the study of mass culture within the movement (“Imagining the Laws of the Father” 5-7).¹ From a Canadian perspective, Sarat’s perceived marginalization makes the state of the field in Canada seem doubly marginalized. Relatively little theory exists that examines cultural portrayals of Canadian lawyers and the Canadian legal system.² Further, there has been a dearth of critical interest in representations of the Canadian lawyer in Deverell’s novels, Pyper’s Lost Girls, Gélinas’s play, or television shows Street Legal.³ In contrast, Margaret Atwood’s Alias Grace has received a great deal of critical scrutiny, even by American scholars. Yet, the vast majority of the critical commentary focuses on topics other than the legal aspects of the text. However, while this is a relatively new field of study in Canada, the influence of the American movement is picking up momentum quickly, with the

¹ Sarat reiterated this sentiment in his keynote address at the 2007 Association of Law, Culture and the Humanities conference.
² Canadian scholars who have engaged this topic include, e.g., Bérubé, Boire, Brigg, and McPherson. For an example of “law as literature” in Canada see, e.g., Greig Henderson, “The Cost of Persuasion: Figure, Story, and Eloquence in the Rhetoric of Judicial Discourse” (2006).
³ Street Legal has received more critical attention than the rest of these works, although in comparison to its American equivalents, it has received very little.
development of new courses and programs dedicated to interdisciplinary work in this area at Canadian universities.

Although the differences between Canadian legal systems and the American one are not as profound as the divide between the Anglo-American adversarial system and the continental inquisitorial system, there are still differences that affect our portrayal of lawyers in popular culture. The English-Canadian legal system derives from the English system and is still influenced by decisions of the English court. American legal decisions impact Canadian courts in much more limited circumstances, but it is clear that in popular culture, the American influence is much stronger on the English-Canadian understanding of trials and our cultural perceptions of lawyers and judges.

However, the influence of American television, movies and novels is undeniable. Even the Canadian “Court TV” channel is dominated by American trials (e.g., Phil Spector, Michael Jackson), television shows like The Practice, America’s Dumbest Criminals, and The FBI Files (www.courttvcanada.com). The Canadian content on the channel, for the most part, does not approach the popularity or mass distribution of the American content. Although the proliferation of American fictional legal narratives has not simply spawned Canadian knock-offs, many Canadian works share in the American (and British) skepticism of the legal system as a legitimate and effective means of resolving conflict.

This skepticism seems to reflect the views of the Canadian population. A 2001 report from the Research and Statistics Division of the Department of Justice concluded that Canadians have more confidence in the local police and the RCMP than they do in

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4 Québec’s substantive law derives from the French civil law system, but the courts have the same adversarial structure as they do in English Canada.
5 They are also bound by certain very old English court decisions.
the court systems, judges and lawyers. Yet, the report also shows that Canadians do not have an accurate perception of crime rates. Overall, Canadians think crime rates and disrespect for the law are increasing, but violent crime rates in Canada (including homicide, sexual assault and assault) decreased over the seven-year period preceding the report (vii). Interestingly, the report found that “Canadians reject the notion that the media play an influential role in determining their attitudes towards crime. The public is of the opinion that increases in violent crime, youth crime and crimes in general are real and not simply a result of media coverage” (7). While the common understanding of “media coverage” would probably not even include fiction, these findings nevertheless show that the public is mostly oblivious to the influence of mass-mediated images on popular perception of the legal system and its personnel.  

**Postmodern Approaches in Canadian Fictional Legal Narratives**

Skepticism toward the legal system is developed through postmodern narrative techniques in Margaret Atwood’s *Alias Grace* (1996). The novel revisits the story of the real-life figure of Grace Marks, who was convicted of murdering her employer, Thomas Kinnear, and his housekeeper, Nancy Montgomery, in 1843. Here, Atwood often uses

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6 Table 9: Canadians' level of confidence in criminal justice institutions:

<table>
<thead>
<tr>
<th>Institution</th>
<th>A lot</th>
<th>Some</th>
<th>Little</th>
<th>None at all</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>RCMP</td>
<td>34%</td>
<td>46%</td>
<td>10%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>20</td>
<td>49</td>
<td>19</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Local police</td>
<td>30</td>
<td>50</td>
<td>11</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Provincial Court</td>
<td>12</td>
<td>48</td>
<td>25</td>
<td>11</td>
<td>3</td>
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<tr>
<td>Judges</td>
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<td>50</td>
<td>23</td>
<td>13</td>
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<td>30</td>
<td>22</td>
<td>3</td>
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<tr>
<td>Parole Board</td>
<td>4</td>
<td>31</td>
<td>31</td>
<td>26</td>
<td>8</td>
</tr>
</tbody>
</table>

Question:
In general, would you say you have a lot of confidence, some confidence, little confidence or no confidence at all in each of the following…?

(Stein 11)

7 For a discussion of the pervasiveness of media constructions of crime, see Stuart Hall, *Policing the Crisis: Mugging, the State, and Law and Order* (1978), in which the author displays the influence of the media on perceptions of mugging in Britain.
parody or irony, a strategy that has “also been a favorite postmodern literary form of writers in places like Ireland and Canada, working as they do from both inside and outside a culturally different and dominant context” (A Poetics of Postmodernism 35). However, Alias Grace does not appear to be a response to the culturally dominant influence of the United States. Rather, this ironic return to the past confronts the non-fiction texts that originally constructed Grace’s identity. Further, while Michel Foucault is never named as an intertext in the novel, many elements of Alias Grace resonate with his analysis of the history of medico-legal discourses.

For example, as we shall see in Chapter 5, Atwood’s use of non-fiction excerpts in the novel recalls the way in which Foucault and André Gide approached material relating to the trials of Pierre Rivière and Redureau, respectively. Atwood uses excerpts from Susanna Moodie’s Life in the Clearings (1853), newspaper articles and prison documents. These excerpts appear collaged at the beginning of the novel, and are also interspersed in groups throughout the text. However, rather than leaving the non-fiction sources to speak for themselves, as Foucault and Gide largely did, Atwood intersperses the existing, non-fiction material with quotations from poetry and prose (quotations which are often contemporaneous with Grace’s trial). This creates the effect of

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8 Examples of Canadian parodies of the legal thriller include Jeffrey Miller’s Murder at Osgoode Hall and Murder’s Out of Tune. They feature a cat protagonist, whose black and white markings resemble a Canadian lawyer’s robes and tabs. Kept by a judge, the cat solves murders that occur, taking the traditional “lawyer as detective” role that occurs in so many legal thrillers.

9 Atwood explains her initial interest in Grace’s story: “I came across it a long time ago when I was writing a series of poems about one of the people who makes an appearance in the book – Susanna Moodie, who wrote the story down. But she wrote it, as she says, from memory, and she got a lot of it wrong, as I found when I went back to the actual newspapers of the time and went into things such as prison records. It always bothered me that the story Moodie told was so theatrical. It made you wonder, could it really have been like that? And when I went back to check, in fact, it wasn’t. She had done a certain amount of embroidery” (“An Interview With Margaret Atwood” 569).

10 Note that the prose and poetry excerpts are taken from both American and British sources. Among others, Atwood quotes Emily Dickenson, Nathaniel Hawthorne, Edgar Allan Poe, Christina Rosetti, Robert
juxtaposing non-fiction and fiction, while also highlighting the fact that the non-fiction excerpts are subjective constructions – possibly even as subjective as the fictional passages. Atwood uses just such a contrast to introduce the problematics involved in Grace’s guilt or innocence by juxtaposing a quotation from Susanna Moodie with an excerpt from Emily Brontë’s poem, “The Prisoner” (1845). Moodie describes Grace as having a “cunning, cruel expression. Grace Marks glances at you with a sidelong, stealthy look; her eye never meets yours, and after a furtive regard, it invariably bends its gaze upon the ground. She looks like a person rather above her humble station….” (qtd. in Atwood, Alias Grace 19). The Brontë poem, on the other hand, begins: “The captive raised her face; it was as soft and mild /As sculptured marble saint; or slumbering and unweaned child” (qtd. in Atwood, Alias Grace 19). Although not included in the excerpt Atwood uses, the prisoner in Brontë’s poem is clearly innocent: “Her cheek, her gleaming eye, declared that man had given /A sentence unapproved, and overruled by Heaven” (ll. 63-4).

Atwood also confronts the non-fiction texts through her own fictional contribution. Like Susanna Moodie, she “embroiders”: “When there was a known fact, I felt that I had to use it. In other words, I stuck to the known facts when they were truly known. But when there were gaps or when there were things suggested that nobody ever explained, I felt I was free to invent” (“An Interview With Margaret Atwood” 569). The fictional narrative is fragmented into several different points of view, although Atwood resists focalizing any part of the story through the figure of the lawyer. While the main narrators are Grace and Dr. Jordan, Atwood compounds the polyphony by including

Browning and Alfred Tennyson. She also, somewhat anomalously, uses a haiku from the Japanese poet Bashō.
fictional letters from Jordan’s mother and Drs. Joseph Workman (superintendent of the Provincial Lunatic Asylum, Toronto) and Samuel Bannerling (another of Grace’s former doctors). Overall, the use of multiple voices and sources in the construction of Grace’s identity presents a fictionalized illustration of the “bataille de discours” that Foucault describes in Rivière’s case.\(^{11}\)

The novel also echoes Foucault’s investigation of the inception of medico-legal discourses. Perhaps the best example of this is Dr. Jordan’s narrative.\(^{12}\) Dr. Jordan is a medical expert, but he interviews Grace partly for the legal purpose of providing a report that may result in her release from prison. While he is not directly affiliated with the legal system, his presence is sanctioned by it. Dr. Jordan denies his use of “normalizing judgment” as a disciplinary technique (Foucault, *Discipline and Punish* 304) by saying, “I am a doctor, not a judge. I simply wish to know what you yourself can actually remember” (*Alias Grace* 306). But of course, Dr. Jordan’s report holds the potential to influence the judiciary. He is exactly like the “doctor-judges” that Foucault describes (*Discipline and Punish* 304), who have absorbed the power to judge from actual judges, and who have an “immense ‘appetite for medicine’ which is constantly manifested – from their appeal to psychiatric experts, to their attention to the chatter of criminology – expresses the major fact that the power they exercise has been ‘denatured’…” (304).

Suggestions of Foucault’s discussion of the slippery nature of psychological influence on criminal cases appear from the beginning of the book, when another doctor comes to measure Grace’s head. She narrates: “He is measuring the heads of all the criminals in

\(^{11}\) Again, see my discussion in Chapter 5.

\(^{12}\) Again, note the close link between detective and psychologist (see Pyrhönen 80 and my discussion in Chapter 5). Here, Dr. Jordan’s role is to attempt to answer the question “Whodunit?” In comparison, the role of the lawyer, Kenneth McKenzie, is very small.
the Penitentiary, to see if he can tell from the bumps on their skulls what sort of criminals they are, whether they are pickpockets or swindlers or embezzlers or criminal lunatics or murderers…” (28). The concern with what we now see as faux-psychology continues through the book, including the “séance” session with “Dr. Dupont” (395-404) that so impresses the Reverend Verringer (431-4).

*Alias Grace* fictionalizes still other Foucauldian concepts. The line between household gossip and testimony that Foucault discusses in *Moi, Pierre Rivière…* is exemplified in Dr. Jordan’s ironic, near-miss situation with his landlady. Sent to judge Grace, the physician comes close to committing her crime himself. He is judged in turn by others: the housekeeper, Dora, claims he had dug a grave in the backyard for Rachel Humphreys’ body (427). Her household gossip remains in the “everyday,” but could so easily cross the line into legal discourse if she were called as a witness in a trial. Likewise, Foucault’s extended examination of the birth of the prison in *Discipline and Punish* finds its echoes in Atwood’s use of the list of offences and punishments from the Kingston Penitentiary “Punishment Book” (9) and Grace’s descriptions of prison life. James McDermot’s hanging resonates with Foucault’s view of public capital punishment: “The public execution did not re-establish justice; it reactivated power….The justice of the king was shown to be an armed justice. The sword that punished the guilty was also the sword that destroyed enemies” (*Discipline and Punish* 29-50). In the newly forming society of mid-nineteenth-century Canada, the public hanging is especially relevant in light of the government’s need to establish its power in the wake of the Mackenzie Rebellion, mentioned repeatedly throughout the novel.

Grace’s own narrative shows a surprising awareness of the layers of discourse that
construct her identity. Marie-Thérèse Blanc discusses the issues of Grace’s narrative as a confession in her unpublished dissertation, “Another Face of Justice: Interpretive Debates Within the Canadian Trial Novel After 1970” (2004), but rejects that description in favour of categorizing the novel as a “trial narrative.” Blanc notes all the negative aspects of confession: according to Foucault, it is “a ritual that unfolds in a power relationship” (qtd. in Blanc 53); Jeremy Tambling states that the confession “is that of power at the centre inducing people at the margins to internalize what is said about them” (qtd. in Blanc 54); and Peter Brooks makes the point that some confessions may be likened to entrapment (Blanc 54). While feminists Rita Felski and Irene Gammel argue that women’s confessions can be empowering for the confessant, and that women “manipulate the confessional framework” (Gammel, qtd. in Blanc 55), Blanc nevertheless rejects the confessional aspects of Grace’s narrative.

However, an approach that allows for the simultaneous co-existence of elements of each of these categories would avoid unnecessarily creating a binary opposition between the confession and the trial narrative. Grace’s narrative bears other markers of confession that suggest that she has a certain amount of mastery over the content of her narrative. Clearly, Grace is conscious of the constructed nature of official truth, shown by her comments about the trial. For example, she recounts the instructions given to her by her lawyer, Kenneth McKenzie, on how to behave in court: “He wanted me to tell my story in what he called a coherent way, but would often become annoyed with me; and at last he said that the right thing was, not to tell the story as I truly remembered it, which

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13 As mentioned earlier, the academic interest in the novel has been intense. Yet, the only studies that dedicate themselves to examining the novel’s legal aspects are Blanc’s dissertation and her article, “Margaret Atwood’s Alias Grace as the Construction of a Trial Narrative” (2006).
14 Blanc does not refer to Grace’s narrative as confession in her 2006 article.
nobody could be expected to make any sense of; but to tell a story that would hang

gether, and that had some chance of being believed” (357). Likewise, MacKenzie

points out the possibility of Grace’s manipulation to Dr. Jordan:

“Lying,” says MacKenzie. “A severe term, surely. Has she been lying to

you, you ask? Let me put it this way – did Sheherzade lie? Not in her

own eyes; indeed, the stories she told ought never to be subjected to the

harsh categories of Truth and Falsehood. They belong in another realm

altogether. Perhaps Grace Marks has been telling you what she needs to
tell, in order to accomplish the desired end.”

“Which is?” asks Simon.

“To keep the Sultan amused,” says MacKenzie. (377)

Indeed, Grace herself has previously expressed the desire to embellish her story in order to entertain Dr. Jordan: “Because he was so thoughtful as to bring me this radish, I set to

work willingly to tell my story, and to make it as interesting as I can, and rich in incident, as a sort of return gift to him; for I have always believed that one good turn deserves another” (247). In performing for her “Sultan,” Grace’s testimony takes on several characteristics that have been identified in real-life criminal confessions: (1) she

references her role as storyteller; (2) she acts as an editor; and (3) she

points to the

possibilities of the boundaries of her narration.15 Repeatedly throughout her narration, Grace notes the places where she would prefer not to tell Dr. Jordan something, for example: “Just because he pesters me to know everything is no reason to tell” (216).

Later in the text, she wonders: “What should I tell him, when he comes back? He will want to know about the arrest, and the trial, and what was said. Some of it is all jumbled

in my mind, but I could pick out this or that for him, some bits of whole cloth you might

15 These aspects of confessional evidence have recently been highlighted by Jessica Silbey in her analysis of the videotaped confession of Bernard Goetz (a white man acquitted of murder and assault after he shot four black men on a New York subway). Silbey maintains that confessants tailor their evidence, and that they spin it out over and over. She believes that narrative techniques in fiction and in giving evidence coincide, and that commonalities between storytelling and the narratives that are spun out in trials. Silbey identifies confession as “the Queen of proofs,” and highlights the duplicitous nature of filmed confessions.
say, as when you go through the rag bag looking for something that will do, to supply a touch of colour. I could say this:…” (353). Grace is definitely aware of her role as storyteller and editor, and of the boundaries of those roles.

Ironically, despite the novel’s lack of claim to providing any sort of absolute truth, the jacket copy of the novel proclaims: “Alias Grace is a beautifully crafted work of the imagination which reclaims a profoundly mysterious and disturbing story from the past century.” However, such a marketing claim misses the point of the novel and so many of the issues inherent in fictionalizing an account of a historical figure. Certainly, Grace has been given a voice, and a different version of events than the versions constructed by legal documents and newspapers at the time. However, it is still a fictional voice, and however carefully researched, the real Grace Marks cannot ever really reclaim her own story. “Reclaiming” implies that the author, perhaps as a representative of contemporary society, somehow has a claim to Grace Marks’ story. In the end, according to all accounts, Marks preferred to have vanished without leaving a textual trail of her whereabouts. The word “reclaimed” implies that literature can somehow put to rights the past injustices either committed or neglected by the legal system. Rather than seeing the story as a “reclaiming,” while Atwood’s version of the story is probably a fairer story than the previous discourses, it is yet another voice in the Foucaultian “bataille des discours.”

Another Canadian fictional legal narrative that relies on postmodern strategies is Andrew Pyper’s novel, Lost Girls (1999). However, unlike Alias Grace, Lost Girls bears many similarities to the American legal thriller genre.16 The plot and characters initially

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16 Small details also suggest the influence of American culture on Pyper’s writing, as well as his inexperience in describing the Canadian courtroom (for Pyper graduated from the University of Toronto’s
appear to be straight out of a legal thriller: criminal defense lawyer Bartholomew Crane is sent to defend Thomas Tripp, a high school English teacher accused of the murder two of his students. Yet, as the novel progresses, it becomes evident that this story does not conform to the conventions of the genre. **Lost Girls** deviates from the standard legal thriller formula by its highly literary style. The novel’s engagement with history recalls Hutcheon’s description of historiographic metafiction, a type of fiction that bridges “the gap between élite and popular art, a gap which mass culture has no doubt broadened. Many have noted postmodernism’s attraction to popular art forms such as the detective story… novels like these parodically use and abuse the conventions of both popular and élite literature, and do so in a way that they can actually use the invasive culture industry to challenge its own commodification processes from within” (20). Pyper is obviously conscious of the dilemma of the marginalization of Canadian culture.\(^\text{17}\) Undoubtedly, Pyper is also aware of the strategies that Canadian writers use to resist this marginalization, and **Lost Girls** is marked by irony and other postmodern techniques.\(^\text{18}\) However, rather than referring ironically to American popular legal culture, the novel makes clear allusions to Romanticism.

Pyper prefaces the novel with a reference to Nietzsche’s *Beyond Good and Evil:*

> “Terrible experiences pose the riddle whether the person who has them is not terrible.”

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\(^{17}\) Faculty of Law, but never practiced). For example, his supposedly Canadian judge uses a gavel (253), an American symbol of justice not found in Canadian (or British) courtrooms.

\(^{18}\) In the novel Barth comments on Canlit: “I recall novels and poems fed to us in high school which involved lonely settlers and their wives, the difficulties in building a log cabin, and the eventual freezing to death of the protagonist. This, I believed throughout my schoolboy career, was the single plot and full extent of Canadian Literature” (36).

\(^{18}\) It also shares Atwood’s interest in the fantastic, as evident in *Alias Grace:* “Although Atwood does not allude to specific fantastic intertexts, she uses motifs and archetypal images from the various genres of the literary fantastic that have always inspired her writings, such as ancient myth, the gothic novel, the folktale, and the occult” (Staels 428). Elements of the ghost story and the gothic also appear in **Lost Girls**, as visions of the “lost girls” haunt Barth.
Lost Girls then sets to work elaborating on this quotation. Playing on the Romantic idealization of nature, the novel contrasts a sterile urban environment in Toronto (where Barth lives in a renovated warehouse: “Vacant, off-white, ahistorical pre-personalized space” [28]) with the natural setting around the fictional town of Murdoch, Ontario. The novel’s prologue is set at a cottage during Barth’s childhood, described in idyllic terms: “An afternoon following a day so perfect that people can speak of nothing but how perfect a day it has been” (1). Yet, the perfect day ends with the death of Barth’s young female cousin, complicating our understanding of the meaning of the idyllic setting.

Along with the ironic relationship to the Romantic setting, Pyper also uses the Romantic hero as a model for his protagonist, as defined by Lillian R. Furst: “the crux of the Romantic hero’s tragedy [is that] his egotism is such as to pervert all his feelings inwards on to himself till everything and everyone is evaluated only in relationship to that precious self, the focus of his entire energy” (qtd. in Wilson 246). At the beginning of the novel, Barth embodies many of the negative stereotypes of lawyers, in particular of lawyers as unethical and corrupt: he is coke-addicted (33), frequents strip clubs (saying things like, “I like the young looking ones”) (25), and his “worst mark in law school was in Professional Ethics” (135). His law firm, Lyle, Gederov & Associate is commonly known as “Lie, Get ’Em Off & Associate” (18).

The Romantic hero’s individualism is sometimes cast in a positive light, but here Barth’s individualism initially manifests itself as selfishness. At the beginning of the novel, he secures an alibi for a client by convincing a witness to lie. His attitude toward his unethical behaviour is summed up by his commentary on the case:

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19 Furst’s definition differs somewhat from the usual associations with the Romantic hero, but fits Barth exactly.
Of course I understand how this sort of thing gives rise to the concern that my role in these proceedings shows a lack of ethics. And how then an argument could be made in sharp response, the one that lawyers always make to justify assisting the guilty for a fee: that everyone has a right to be presumed innocent in a free and democratic society, and that every opportunity must be afforded the accused to meet the charges made against him, etc., etc.

But I will not make such an argument. Not because I believe it to be false, but because philosophy makes no difference and truth is none of my concern. (17)

As the novel progresses, the Tripp case becomes entangled with Barth’s obsessive and possibly drug-induced state of hallucination. His sense of guilt about his past takes precedence over the families and the community of the missing girls, and even his client. Instead, his investigation of the case becomes inextricably bound up with his investigation into his own past and his guilt over the accidental deaths of his cousin and parents.

Other references to Romanticism permeate the text. “The Lady” conjures up obvious ironic echoes of “The Lady of the Lake.” The bar Barth frequents in Murdoch is named the “Lord Byron Cocktail Lounge.” Early on in the novel, he professes a high-school love of Romantic poetry (“Keats, Byron, Shelly and other flowery sorts” [58]), and admits to a forced memorization of Keats’ “Ode to a Nightingale.” However, Barth’s recall of the poem reads ironically. For example, he quotes the following passage: “My heart aches, and a drowsy numbness pains / My sense, as though of hemlock I had drunk, / Or emptied some dull opiate to the drains / One minute past, and Lethe-wards had sunk” (qtd. at 57). However, his recollection of this passage comes after using a “modernized” version of hemlock: cocaine. The quotation underlines the

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20 This is an intertext that Lost Girls shares with Margaret Atwood’s Alias Grace, in which Grace also refers to Sir Walter Scott’s The Lady of the Lake. Alias Grace also shares a preoccupation with ghosts. 21 Fittingly, Pyper has chosen an intertext that is itself richly intertextual, as flagged by the line, “How many bards gild the lapses of time!” (see O’Rourke 3).
fact that the narrator is not a Romantic poet, but a drug-addicted lawyer. Barth also quotes the end of the poem: “Was it a vision, or a waking dream? / Fled is that music: – do I wake or sleep?” (qtd. at 60). This flags the issue of his reliability as a narrator. It leads the implied reader to question the truth of his story, and to wonder whether it is real, or simply a cocaine-induced hallucination. Barth returns to the poem later in the novel, when he revisits his family’s cottage, finds his father’s volume of Keats and flips to “Ode to a Nightingale.” His deceased father has made annotations in the margins of the poem, which also give clues to the themes in the novel: “physical/spiritual unity” and “beauty = supremacy over death” (295). However, these themes are not developed in the spirit of the Romantics, but rather in the context of Barth’s jaded view: “For me, law school was the discovery of religion, albeit a godless one, with its Latin prayers and shifting, manufactured convictions” (59). This version of religion reflects a harsh view of the legal system, as well as commenting on the absence of real spirituality in contemporary society.

Another ironic echo of Romanticism occurs when Tripp explains his views on narrative to Barth:

“One of the things I tried to teach my students is that narrative – what happens to us, the things we do to others – the whole thing is organic. Of course it was a waste of breath most of the time. But those girls, they understood right away.”

“What do you mean by organic, exactly?”

“Always changing yet always connected,” he says, throws his hands a few inches into the air and spreads his fingers wide. “Always alive.”

“So once you’d taught that lesson to the girls, what else did you do?”

“Let them grow.”

“Let who grow?”

“The stories.” (156)
Tripp’s extension of the story world into “real-life” is an ironic distortion of the
Romantics’ view of the “organic” nature of narrative. His extreme interpretation of this
view becomes his excuse for murder, and part of his admission that he was responsible
for drowning the girls (327).

Other elements of the novel display a self-consciousness about the narrative
process. *Lost Girls* looks back at a moment when “The Lady” was badly treated by the
local townspeople. “The Lady” is a figure of local legend, allegedly the victim of vigilante
killing by the local townsmen. This legend has been told and retold by various
townspeople. It also has a basis in historical documents, like the fictional text, *The
History of Northern Ontario Towns*, by Alistair Dundurn, a photograph of “the Lady”
that Barth tapes on the wall, hospital records, and librarian Doug Pittle’s oral description
of his research from Nuremburg transcripts. Commenting on Dundurn’s text, Pittle
points to the limitations of certain kinds of narratives: “A manuscript. Dundurn’s.
Except more like Dundurn’s own memoirs. Very interesting stuff. A later work than his
history, probably written at the same time as he was going a bit wonky. Which either
makes it more honest or completely unreliable” (211).

Positioning Barth as a Romantic hero could point to the Romantic focus on
individualism as a precursor to the development of the lawyer as a popular figure in
contemporary culture. Yet, in order to complete his heroic journey, Barth must allow his
individual sense of morality to override his judgment in legal terms. In the end, his
attempt to convince Tripp to plead guilty is not driven by concern for his client’s best
interests, but for his overwhelming desire to provide closure in his own life, a fact that he
admits to Tripp (325). What may ostensibly seem to be a redemption of Barth’s character
at the end of the novel is only a redemption if considered from his own point of view. Because he believes that his client is guilty, he believes he is taking moral high ground. He quits his law firm when his boss instructs him not to plead Tripp guilty. Barth ruminates on the mercenary nature of his superiors: “They are practical men above everything else. Men who’d lived their professional lives knowing that their time was literally money, that in this business people frequently fall away and that the only choice is to work out the best deal you can and carry on with the dirty job at hand” (334). Barth’s departure from this viewpoint marks his departure from a previously existing order. Instead, Pyper’s ultimate message is in keeping with the Romantic poet’s mandate: “…instead of ridiculing deviations from a revered order, the Romantic poet exposes the deficiencies of the order itself” (Wilson 248). Rather than exalting lawyerhood and the legal system as a heroic institutions, the novel positions them as things that must be shed in order to achieve a higher truth. Thus, Lost Girls delivers a message about law that matches American and British cynicism about the ability of the lawyer figure and the legal system as effective vehicles for bringing about justice.

“Soft-boiled” Lawyers

Canada’s most prolific writer of legal fiction,\(^{22}\) William Deverell, perhaps more than any other Canadian author, comes closest to the American legal thriller genre.\(^{23}\) Like so many other authors of this kind of fiction, Deverell practiced law before turning to literary endeavours. Interviewers have stressed that Deverell has a vast store of real-

\(^{22}\) He is the author of fourteen novels (although not all of them are legal thrillers) and one work of non-fiction, the creator of the television drama series Street Legal and the screenwriter of the film version of Mindfield (1989).

\(^{23}\) Deverell prefers to classify his novels not as legal thrillers, but as “literary dramas” (White 484). While some of his later works may qualify for this designation, others are clearly legal thrillers. Other examples of the Canadian legal thriller include Jack Batten’s Crang Plays the Ace (1987), Straight No Chaser (1989), Blood Count (1990) and Riviera Blues (1991).
life cases to draw from (see, e.g., Small), thereby perpetuating the illusion that his novels spring straight from the courtroom onto the page, without mediation or influence by the conventions of the genre. While there is no doubt that Deverell’s life experience provides a rich source for his writing, legal fiction was already becoming established by the time his first novel, *Needles*, was published in 1979. American audiences were already long familiar with the iconic character of Perry Mason, and the British had already seen their first installments of *Rumpole of the Bailey*. Deverell’s work is an example of fiction written from both inside and outside the American and British traditions.

In his article, “Canadian Crime: From Caring to Chilling,” Deverell considers the differences between Canadian and American crime writing in general:

[author of Canadian Crime Fiction David Skene-Melvin] believes Canadian crime writing is “more subtle, more psychological, more caring” than in the US, “where the gun is forged into the collective soul, where the

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24 Novels and movies featuring Perry Mason first appeared in the 1930s, followed by radio adaptations, the popular CBS television series in the 1950s and 60s.

25 As we have seen, the series began with a BBC “Wednesday Play” in 1975, followed by the first season of television episodes and the first book adaptation in 1978.

26 However, for all Deverell’s creative output, he has failed to draw as much scholarly attention as American authors of popular legal thrillers or Canadian authors of “serious” literary fiction. This may be due in part to the previous lack of resources devoted to the academic study of Canadian popular culture (see David H. Flaherty and Frank E. Manning, eds., *The Beaver Bites Back? American Popular Culture in Canada*, in which the editors note the lack of Canadian university departments dedicated to the study of popular culture, and the absence of a Canadian professional society at that time devoted to the topic [xi]).

However, Deverell notes in his article, “Canadian Crime: From Caring to Chilling,” that the lack of critical attention may also have to do with the fact that Canadian crime writers have battled the intellectual snobbery of librarians running the public library system who, through the 1940s, refused to buy popular fiction due to its “déclassé” nature. Deverell also comments that on the publication of his first novel, *Needles*, “[s]ome readers wrote me expressing shock that I wasn’t an American: Canadians weren’t supposed to write thrillers.” While reviews of his novels have generally been laudatory, one American reviewer offered the following criticism of *Street Legal: The Betrayal*: “In short, it is a Grisham knockoff, and a bad one at that” (*The Virginia Quarterly Review*). Given *Street Legal*’s history as a successful Canadian television series (see discussion below), and the fact that Deverell has been writing novels in this genre since 1979, while Grisham’s first book was published in 1986, the comment is doubly unfair. Deverell has also ventured into American settings, situating *Platinum Blues* in California and *Slander* in Seattle. However, this move garnered criticism from his Canadian fans, who perceived him as “selling-out” (“Canadian Crime”). The negative aspect of working inside and outside of the American cultural context is that Deverell sometimes works under the shadow of the American genre, riding a politically tricky line.
gunslingers of the wild west became the hardboiled private eyes in the cities.” Canada never had a wild west because the Mounties got there first. (We’re about the only country in the world with a policeman as a national symbol. Not a policewoman – we’re not quite as egalitarian as we claim to be.)

When Canadian villains are brought to justice, “we want the state to do it, not vigilantism,” Skene-Melvin says. In the US, on the other hand, the outlaw is an icon.

Deverell comments on the “soft-boiled” nature of many of Canada’s fictional private eyes: “In Canada, we have the caring cop hero…you will not find Lawrence Gough’s Vancouver officers, Willows and Parker, suffering antisocial personality disorder.”

However, Deverell also takes issue with this stereotype, noting that Canada has “a strong noir tradition…and some Canadian offerings can be savagely chilling.” As evidence of this, Deverell cites the “junkie prosecutor, its villain (a sadistic heroin kingpin known as The Surgeon) and its bribe-taking (horrors) RCMP officer” in his own novel, Needles.

Certainly, the novel’s plot and its reliance on sex accord with the expectations of noir fiction. However, Needles brings its own particularly Canadian elements to the genre, tempering the noir elements with a large dose of the “soft-boiled” that Deverell eschews in his article. His first novel sets the stage for the emphasis on regionalism that continues throughout his work.²⁷ Set in Vancouver, Needles highlights unique details of the city and its surroundings: the seedy rooming houses of Chinatown; the heart of the

²⁷ Although Deverell shows a preference for British Columbia, where he spends half of his time, his novels are set in various locations across the country and include characters from all regions. However, he also weaves Latin American elements into many of his novels, creating a typically Canadian bifurcation of nationality (while for many Canadians this bifurcation is a result of immigration, for Deverell, it is a result of adult emigration to Costa Rica, where he spends the other half of his time). For example, High Crimes (1981) is set in Newfoundland, and captures the colour of the Labrador coast and its inhabitants. Some of its characters are fishermen/drug smugglers involved in a Columbian drug deal. Mindfield (1989) is set in Montreal and features separatist lawyer Sarah Paradis. Street Legal: The Betrayal (1995) mainly takes place in Toronto, but ventures into Quebec and includes some French-Canadian characters. The Laughing Falcon (2001) takes the jungles of Costa Rica as its primary setting. Instead of a lawyer, it features a Saskatonian romance novelist as its heroine. Deverell seems to take great care in particularizing the local, and to give his characters authentic regional traits.
drug users’ community at the corner of Hastings and Columbia; the distinctive Vancouver court complex; the ski hills of Whistler and the lushness of Vancouver Island.

Yet, “junkie prosecutor” Foster Cobb is far from the typical anti-hero of noir fiction, and it is even difficult to place him within the range of the hardboiled hero. As Heta Pyrhönen explains the latter type, “[t]he typical investigator is a socially marginalized private detective or a police(wo)man whose investigation throws light on the extreme poles of society: the very rich and the poorest poor” (22). These poles are considerably less extreme in Canada than America, given the smaller range of wealth distribution and the comparatively larger social safety net in Canada. Needles does manage to seek out one of the most extreme situations of poverty and drug use in Canada in its exploration of Vancouver’s Downtown Eastside. Yet, there is less exploration of the “very rich” in the novel than the comfortably upper middle class.

Also, to describe Cobb as “socially marginalized” is not quite accurate. Granted, his drug habit is self-destructive and has affected his legal practice, costing him clients. However, while he is a drug user, he still functions at a high level, and his heroin use has not totally alienated him from the company of his friends. He and his wife are still welcome at social functions, and Cobb enjoys a close friendship with fellow prosecutor Ed Santorini. The social status of the Canadian lawyer (middle-class, at least) and the community-oriented nature of Deverell’s protagonists, already present in this first novel, are two more factors that preclude him from being truly socially marginalized. Although his marriage is troubled, unlike any truly hard-boiled detective, he seeks regular advice from his psychiatrist. The psychiatrist describes Cobb as “a poker-playing pool-hall shark who got hooked on dope and pulled a robbery. He settles down, puts all that

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28 Deverell’s description remains dismayingly and eerily accurate even twenty-nine years later.
behind him, retreats to his den, surrounds himself with his pipes and law books and Mozart and Vivaldi…” (57). However, Cobb’s troubled past does not form a large part of the story. Apart from this and a few other passages, it is barely mentioned, unlike the personal histories of American lawyer protagonists (for example, John Grisham’s protagonist Mitch McDeere in *The Firm*). Such psychological introspection is far from the usual behaviour of the *noir* anti-hero.

Cobb’s intelligence and bravery are repeatedly demonstrated throughout the novel, and his heroic qualities emerge in the courtroom, especially through his tenacity in cross-examination. Toward the end of the novel, his abilities become superhuman, as he survives an overdose of heroin. However, the ultimate resolution is not achieved through Cobb, or through the courts, since Dr. Au, the villain, skips bail and manages to evade imprisonment. Instead, it is the “bribe-taking RCMP officer” Cudlipp, reformed from his corrupt ways, who saves the day along with Cobb’s friend Santorini. While Cudlipp saves Cobb from the hands of Dr. Au, at the same time he saves the reputation of the iconic Canadian institution of the Mounties. Santorini, newly appointed to the bench, underlines the heroic qualities, if not of the legal system as a whole, then of its individual parts.

*Needles*’ other lawyer characters represent a diverse ethnic and racial mix that strives to reflect the reality of Canadian society, and the Vancouver community in particular. Deverell achieves this mix through using ethnic names for minor characters, such as Santorini, Justice Horowitz and defense lawyer Cyrus Smythe-Baldwin. Deverell’s minor characters sometimes exhibit stereotypical behaviour (e.g., Santorini has a reputation for groping women, giving the excuse: “Can’t help it. Hot Italian blood”
But their ethnicity is not explored in any real depth.

However, Deverell creates a more in-depth portrait of a visible minority character in Jennifer Tann, the fourth-generation Chinese-Canadian junior prosecutor who becomes Cobb’s love interest. It is obvious that in Tann, Deverell attempts to provide a politically correct counterbalance for the novel’s villainous Hong Kong drug mafia family, headed in Vancouver by Dr. Au. However, Tann and Dr. Au represent a double Asian stereotype: the hyper-sexualized Asian female, and the sexually deviant, abusive Asian male gangster. Deverell’s repeated references to Tann’s “bird-like” beauty are undoubtedly intended as complimentary, but along with her fixation on seducing Cobb (despite his married status), they contribute to a clichéd image of the Asian female. Similarly cringe-worthy are Dr. Au’s preferred choice of murder weapon (acupuncture needles) and his deadly Eastern knowledge of the body’s meridians. Still, Tann is a competent lawyer and an intelligent person overall. Her organic food and pot-smoking habits show a somewhat rebellious, particularly Vancouverite streak that contrasts to her upbringing by traditional Chinese parents. This rings a little truer than other elements of her character, and Deverell’s inclusion of a female visible minority as a positive figure (especially at the time the novel was written) is encouraging in this respect.\footnote{This is especially so in comparison to the portraits of ethnic characters by certain other writers within the genre. See, e.g., British writer Francis Fyfield’s extremely negative portrayal of Chinese people in her quasi-legal thriller, \textit{Looking Down} (2004).} Her organic diet and proclivities toward marijuana also give her a decidedly soft-boiled bent.

In his subsequent novels, Deverell’s lawyer protagonists veer further and further away from the \textit{noir}, developing distinctly toward the soft-boiled. The protagonist of Deverell’s 1984 novel, \textit{The Dance of Shiva}, is young lawyer Max Macarthur, self-described “epitome of male WASPness” (35), son of a prominent judge, and devoted
boyfriend of a psychologist. Lacking a vice like heroin addiction, Macarthur is even further from the socially marginalized hardboiled hero. He is exactly the “more subtle, more psychological, more caring” Canadian crime fighter Skene-Melvin describes. The trend toward the softy-and-fuzzy continues in Kill All the Lawyers (1994), where the multiple point of view assists in developing themes of community. Max becomes a secondary character in this novel, which focuses instead on several of his colleagues at the law firm Pomeroy, Macarthur and Company. Like Max, these lawyers are not loners – there is a definite feeling of camaraderie in their small firm.

In addition to its distinctively Canadian characters and emphasis on the regional (Vancouver, once again), Kill All the Lawyers turns to that particularly Canadian device: irony. However, unlike Alias Grace and Lost Girls, Deverell’s novel does parody American popular legal culture. In Kill All the Lawyers, metafictional elements ironically echo aspects of the American legal thriller, which was already well developed by the time of this novel’s publication. The novel’s plot follows the simple whodunit form often used in the genre. However, as indicated by the novel’s title, the victims are all lawyers. Further, the murderer turns out to be newly appointed Supreme Court judge. These ironic reversals recall Alice Corcos’ comments on another common situational irony: “[t]he image of the lawyer, expert in manipulation and control of the legal system, as the accused in a criminal trial (particularly murder), is an obvious choice for the author wishing to present an ironic situation” (146).

Here, Deverell satirizes lawyers-turned-authors and crime writing in general. Lawyer Brian Pomeroy has exiled himself to Costa Rica and spends his time penning a mystery novel, guided by a fictional text on writing, Mr. Widgeon’s The Art of the
Whodunit. Widgeon’s comically formulaic advice mocks the mystery genre. For example, Pomeroy writes: “Somehow I must find a way to pull the cords of my book together, to tie a knot. Mr. Widgeon demands a tummy-filling sense of completion. No loose ends of spaghetti left on your dish” (173). Such metanarrative commentary departs from the American model, and displays an ironic consciousness of the formulaic nature of the mystery genre. Despite his self-imposed exile, Pomeroy’s periodic letters home to the firm keep him anchored to his community. They also take on a poetic tone—Pomeroy refers explicitly to Keats and Shelley, and he signs his letters sometimes with his name, but sometimes with “Ernest Hemingway” or “Franz Kafka.”

Deverell’s ironic tone continues in his most recent novels, with perhaps his most “soft-boiled” lawyer protagonist, Arthur Beauchamp. Beauchamp first appears in The Dance of Shiva as a brilliant but alcoholic sole practitioner who has left his wife and his law firm to do “shit cases for poor people” (61). Again, Beauchamp initially exhibits some noir characteristics, and serves as the mentor figure and a secondary character to young lawyer Max Macarthur. However, later novels featuring Beauchamp depart significantly from the noir tradition. For example, Trial of Passion centres on a rape trial, rather than a murder. Rather than seeking the answer to “whodunit?” the novel asks, “Did he do it?”30 While the novel remains set on the west coast, it moves away from the exploration of the lower-class milieu depicted in Deverell’s earlier novels.

Beauchamp, recovered from his alcoholism, evolves into a Canadianized Rumpole. Shedding all noir characteristics, he acquires a Rumpole-like appearance (Rumpole’s co-workers constantly bemoan his disheveled state and here a hairdresser

30 April Fool (2005), another Beauchamp novel, returns to murder as its primary subject. However, it also contains an extensive environmental subplot focused on the plight of the fictional Gwyndolyn Forest on Deverell’s invented Garibaldi Island.
Chong 165

says that Beauchamp looks “[l]ike some mad hermit just down from the hills” [262]) and
amuses himself with Rumpole-like verbal irony. Deverell makes a point about his use of
humour: “[t]hat’s another element of Canadian crime literature that should not be
overlooked: we often like to sprinkle our offerings with the salt of humour…”
(“Canadian Crime”). Beauchamp’s ironic use of understatement is influenced, if not
inherited, from Rumpole. Other elements are adapted from John Mortimer’s iconic
character. Beauchamp mirrors Rumpole’s constant literary references and his particular
fondness for ironically quoting romantic poetry. Beauchamp quotes many of the same
authors. What is double-voiced in the Rumpole stories becomes triple-voiced in the
Beauchamp novels. However, while Rumpole’s irony often has a sharp, critical edge,
Beauchamp’s irony is more of a homage to the British character. In keeping with his
soft-boiled nature, Beauchamp is far less cynical than his predecessor.

Beauchamp’s retirement to an acreage on Garibaldi Island marks his transition
toward the rural: “I might have told them this, had I the courage: that I plan to watch the
flowers of spring unfurl, petal by petal. To listen to the songs of uncaged birds. To press
upon a spade and feel it gently sigh into the loam. In short, I am going to ground” (10).
This comes very close to Rumpole’s desire, when faced with the possibility of disbarment
in “Rumpole and the Learned Friends,” to sell his London flat and buy a small cottage
with a garden:

‘Grow vegetables. We’ll probably have to go to the country to do it.’ (163)
...
‘Dig it and dung it! That’s what I’d do. And grow the stuff I’m rather
keen on. Artichokes and marrows and parsnips and, after a few years,
perhaps asparagus…’ I had found what I wanted, a seed catalogue, full of
fine colour photographs of prize vegetables. ‘Look, Hilda. Do look at
this. Please look at it.’
I took the catalogue over to Hilda, and held it open at a particularly succulent row of runner beans. ‘Don’t you think it all looks rather splendid?’ (164)

However, while both lawyers do retire, Rumpole’s retreat to Florida is brief (see “Rumpole and the Age for Retirement” and Rumpole’s Return). What is a temporary withdrawal in Rumpole becomes a full-blown satire of the Romantic idealization of nature in Trial of Passion. Yet, the satire is still firmly in the realm of the soft-boiled.

Much of the novel’s humour comes from the “fish-out-of-water” concept, since “big-city” lawyer Beauchamp spends much of the novel attempting to come to grips with his island neighbours and his dilapidated house. Leaving Vancouver, Arthur retires to Garibaldi Island expecting to leave law behind him in the city. However, instead of a place untouched by legal authority, Garibaldi Island is the location of farcical justice. While the novel’s main plot revolves around a “serious” rape trial situated in Vancouver, another trial takes place when Beauchamp’s neighbour, Margaret Blake, sues him when he accidentally hits her pig with his Rolls Royce. Instead of happening in a courthouse, trials take place in a community hall furnished with folding chairs. Here, local police are unable to prosecute Stoney, a dimwitted local responsible for growing marijuana plants on Beauchamp’s property. Here, Beauchamp’s usual legal prowess is nullified. Even the circuit court judge takes part in the reversal of Beauchamp’s ordinary world, as he rules against Beauchamp: “He is smiling, too. He is enjoying the humiliation of the city-slicker lawyer” (176).

The “serious” trial in Trial of Passion again invokes the situational irony, in which the figure of legal authority becomes the accused. Here, rather than a judge, the accused is the acting dean of the UBC law school, Jonathan O’Donnell. O’Donnell has been

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31 Beauchamp becomes even more “soft-boiled” in April Fool, where he is essentially a domesticated island househusband.
accused of rape by law student Kimberley Martin. This type of irony potentially has a “sharper edge” than the relatively harmless humour of Beauchamp’s witticisms or the carnivalesque community justice of Garibaldi Island. Despite the fact that O’Donnell is found innocent in the end, the process of the trial questions his authority and his position as Acting Dean of the law school. Yet, despite O’Donnell’s potential to exemplify abuse of authority and the corruptibility of educational institutions, he, too, turns out to be a “soft-boiled” character. The potential for the ironic critique of the legal system and its institutions, which Deverell so boldly attacked in his earlier novel, Kill All the Lawyers, becomes diluted. Here, as in his other novels, despite the questioning of the legal system and its individual components, Deverell’s work presents a positive view of the Canadian legal system and its agents.

The same sort of soft-boiled characters also populate the television drama series that Deverell created, Street Legal, which ran for eight years (1987-1994). Janice Kaye notes: “When Street Legal completed its eighth and final season, one TV journalist called it ‘unblushingly sentimental, unblinkingly campy, unabashedly Canadian and completely addictive.’” Certainly, the original ensemble cast of Carrie Barr (played by Sonja Smits), Chuck Tchobanian (C. David Johnson) and Leon Robinovich (Eric Peterson) suffer so obviously from the Canadian affliction of niceness at the beginning of the series, that the un-Canadianly bad character of Olivia Novak (Cynthia Dale) is introduced in the third season.

32 There is a politically correct balance between Trial of Passion and Deverell’s next novel, Slander (1999), in which a judge is found to have committed the rape of which he is accused.

33 Canada has produced a number of legal television series, including The Judge (1982), The Associates (2001-2002), This Is Wonderland (2004-2006), and Billable Hours (2006-2008). However, Street Legal is the longest-running and most notable Canadian legal series.

34 Other main characters Rob Diamond (Albert Schultz) and Laura Crosby (Maria Del Mar) are introduced to balance the loss of Carrie Barr, who is killed by a drunk driver at the end of season six.
Olivia enlivens the show with her ethically questionable interpretation of legal practice and her overt sexuality. Chuck’s behaviour also becomes progressively more adulterous and deceptive as the show progresses (he has an affair with Olivia and subsequently divorces his wife). Actor C. David Johnson may have thought of Chuck’s character as a “sleaze ball,” but admitted that he became defensive of the character if someone happened to criticize Chuck’s behaviour (Knelman 29). While none of the main characters are as angelically good as Carrie, none are completely unsympathetic. The range of the lawyers’ behaviour on Street Legal does not even begin to approximate the potential for evil that Americans see in their law firms, as demonstrated by the literal demonification of the managing partner of the law firm in the film The Devil’s Advocate or the Mafia-run legal partnership in John Grisham’s The Firm.

Still, the American influence on the show is undeniable. However, Mary Jane Miller explains that Street Legal is a product of generic “inflection”: “the grafting of new ideas, dramatic conventions, and technical advances onto old conventions” (104). According to Miller, Street Legal provided a Canadian take on the existing American television genre previously described as “Doctors and Lawyers: Counselors and Confessors” (106). Miller maintains that Street Legal was a particularly Canadian series, and calls comparisons to the contemporaneous American L.A. Law “inappropriate” (110), noting several differences between the two shows that “match the sensibilities and concerns of audiences in two different countries” (111). The differences between the size of the law firms (L.A. Law takes place in a large firm, while Street

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The television series shows the visual equivalent of the local and the particular in Deverell’s novel. *Street Legal* is famous for its shots of Toronto’s streetcars, the CN Tower, the Royal Bank Plaza on Bay Street, etc.

However, while *Street Legal* had a regular audience of one million viewers, reaching its peak at 1.6 million (Knelman 29), *L.A. Law* routinely held an audience of 14 million (Margolick).
case for an RCMP candidate, as well as representing an African-American nurse in front of the Human Rights Commission. Olivia became a producer of a Canadian movie.

Chuck defended a wealthy Native cigarette smuggler on conspiracy to commit murder.

Leon represented the survivors of a mine disaster and then ran for mayor of Toronto.

Leon and Alana became involved with a Mexican refugee, eight months pregnant, who gets in trouble with CSIS, the Canadian intelligence agency. Human interest stories intertwined with the political issues and the characters’ personal lives” (Kaye). The undoubtedly positive aspect of dealing with such issues on prime-time television is that the mass media carries them to audiences who might not ordinarily consider these issues. The fictionalization of serious problems is one way to make them easier to digest.

However, Street Legal and other shows run the risks of trivializing complex problems, and allowing the public to remain ignorant about deeper issues concerning certain communities. For example, in “In Search of Dreams” (episode 35, February 3, 1989) Leon represents an adolescent Aboriginal boy, Ryan, who is taken from his foster family by the Children’s Aid Society. Rufus, the boy’s foster father, had taken him on a three-day Ojibway “dream quest,” without food in the secluded forest. The Children’s Aid society interprets the dream quest as child abuse. The episode certainly touches on significant issues. Rufus repeatedly expresses the sentiment that the court delivers “white law, not native law.” An academic expert on Aboriginal culture testifies that it is no longer possible to prepare adequately for the ritual, as too many of the necessary training customs have been lost. Rufus admits that he has not undergone a dream quest himself. However, Ryan insists on speaking in court, expresses his love for his foster parents and impresses the judge with his newfound self-knowledge gained from the dream quest.
Noting that in her capacity as a family court judge, she does not have to determine the validity of the dream quest ritual as a legitimate spiritual practice, she smilingly allows Ryan to return to his foster parents. She states that they are “the parents that Ryan wants, and the parents that Ryan needs.” This pat resolution allows the show’s writers, director, producers and the audience to feel that they have “covered” Aboriginal legal issues.

Should we commend television series for dealing with “serious” issues in the first place, even when they merely skim the surface of fundamental problems in Canadian society? When *Street Legal* devotes a single episode to these issues without so much as acknowledging the extent of Aboriginal issues, it risks falling into the trap of tokenism. Part of the reason for this may be that, like other legal drama series, *Street Legal* most often focuses on the inherently dramatic criminal and family law cases. An different Aboriginal case like *Guerin v. The Queen*, [1984] 2 S.C.R. 335, with its complex breach of trust issues, would be difficult to dramatize, and perhaps not suitable material for a one-hour episode of a serialized legal drama series. Further, given the necessity of keeping the audience interested in the lives of the other characters, this particular episode also contains several other storylines: Carrie represents an impoverished country musician in a civil case against the City of Toronto; Chuck has to deals with problems with the firm’s trust account; Olivia confronts Leon about the firm’s financial problems, only to be snubbed by him because of her extra-marital affair with Chuck. It is clear that, even without the American influences on the content of the show, the primary purpose of television shows like *Street Legal* is entertainment, not critical analysis. As such, it does not launch many substantive critiques of the legal system, beyond those that can be neatly closed within an hour. Further, the underlying message beneath most of the show’s
episodes is that, just like its soft-boiled lawyer characters, the legal system is a soft-boiled institution that is capable of producing just results.

**French-Canadian Fictional Legal Narratives**

As relatively small as the body of English-Canadian fictional legal narratives is, French-Canadian examples are much more scarce. Surprisingly, the few examples that exist do not seem to follow the French tradition as closely as do other French-Canadian crime novels. Skene-Melvin writes that, as French-Canadian crime writing developed, “francophone crime writers followed the continental model, but under cultural pressure set their novels in Quebec” (xxvii). He categorizes contemporary examples into four groups: (1) “the literary novel that is criminous in its theme;” (2) “the classic roman policier”; (3) “the roman noir”; and (4) “formulaic paralittérature” (for young adults) (xxvii). Rather, the existing few French-Canadian fictional legal narratives show North American influences and depart significantly from the predominant image of the juge d’instruction in France.

Gratien Gélinas’s play, *Hier, les enfants dansaient* (1966) portrays lawyers and the legal system in a somewhat different light than English-Canadian, American or French fictional legal narratives, but the play also combines certain elements of representations from all three cultures. Gélinas’s choice of a lawyer and his law student

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38 While legal thrillers are rare in the French-Canadian tradition, Paule Turgeon’s 2003 novel, *Au coin de Guy et René-Lévesque*, is a fairly straightforward legal thriller, albeit one with supernatural elements. Young criminal lawyer Sarah Lanthier is hired at a prestigious Montreal firm, and is promptly charged with defending Nelson Voyer, accused of murdering an elderly woman by stabbing her to death. Parallel to the modern-day trial, Sarah is compelled by supernatural visions to investigate a 50-year-old case in which a young father was erroneously hanged for the murder of his boss. The novel’s title, which is particularly local and hints misleadingly at the possibility of political subject matter, actually refers to the street corner that houses the real-life Couvent des Soeurs Grises in Montreal, linked to the ghost story.

39 See my discussion in Chapter 5.

40 Gélinas also wrote an earlier play with legal themes, *Bousille et les justes* (1961), dealing with the hypocrisy of a sanctimonious family (also incidentally named Gravel), who end up killing the sole witness to a murder perpetrated by one of them. However, the lawyer and the legal system feature less centrally in *Bousille*, so I have chosen to focus instead on *Hier, les enfants dansaient*. 
son as protagonists reflects the Anglo-American fascination with the figure of the lawyer, but the rebelliousness of the son mirrors at least one trait found in many of the French images (particularly of the juge d’instruction): the tendency toward vigilantism. Here, the political conflicts surrounding FLQ-era Canada are played out in the microcosm of a single household. Gélinas instead uses his two main characters to represent both sides of the political divide in a matter that is at the heart of Québécois politics. The federalist father, Pierre Gravel, is on the verge of being appointed a cabinet minister, while the separatist son, André Gravel, sees the law as an instrument of commercial forces that he must battle with acts of terrorism. Gélinas, concerned that the French-Canadian theatre was becoming a “museum” due to its dissociation from the daily concerns of the public, sought to dramatize subject matter that reflected both the political and the domestic struggles of ordinary French-Canadians (Larocque 124). The play is a story of federalism versus separatism, but it is also the story of a divided family and a generation searching for freedom.

Hier, les enfants dansaient is also an exploration of the emergence of a new social class and its role in the future of Canada, a “tranche de la vie de la classe bourgeoise canadienne-française” (Larocque125). The play’s two acts take place entirely in Pierre Gravel’s living room, which Gélinas describes meticulously: “De l’élégance, de chaleur surtout. Le mobilier est de bon gout, mais on sent qu’une femme sereine l’a choisi moins pour épater les visiteurs” (7). The description goes on for almost a page, in which Gélinas describes each item of furniture in novelistic detail, noting that overall, they contribute to “l’atmosphère ‘habitée’ du salon, sans toutefois l’encombrer” (7). It is in
this comfortable domestic setting that the tensions unfurl between bourgeois Pierre\textsuperscript{41} and his son André, who acts as the voice of the working class.

Pierre’s political position is clear from the beginning of the play. A steadfast Liberal, Pierre is on the eve of receiving a Federal appointment as Minister of Justice, slated to replace the ailing, fictional Duranceau.\textsuperscript{42} The central conflict begins when André arrives home and expresses his disappointment over his father’s pending position. André reveals that he was responsible for a bombing that occurred on the previous night, part of a larger campaign to bomb one British monument every night until election day, after which he plans to turn himself in to the police. André delivers his manifesto to his father and uncle, which reads in part: “Chaque soir, jusqu’au jour du scrutin, l’un de nous abattra, dans sa propre région, un symbole de l’impérialisme britannique n’ayant rien de commun avec la propriété privée, commerciale ou industrielle…” (81). André’s character captures the beliefs of the separatist movement arising out of the Quiet Revolution between 1960-1966, expressing his fear of losing the Québécois culture: “Au train où fonctionnent l’immigration et le système des pilules, les sociologues les plus sérieux assurent qu’à la fin du siècle, les maudits ‘French Pea Soup’ ne compteront plus que pour dix-sept pour cent dans la population totale du pays. Alors là, mes ‘chums’, vous pourrez gueuler à votre aise : dans le coin de la boîte à bois, le génie français, et qu’on n’en reparle plus avant le jugement dernier!” (105).

\textsuperscript{41} Pierre states explicitly that he makes $60,000 a year (14), a considerable figure in 1967 dollars (over $300,000 in present value according to the Consumer Price Index).
\textsuperscript{42} Liberal French-Canadian Lucien Cardin was the Minister of Justice at the time. He was succeeded in 1967 by Pierre Trudeau, which casts an ironic light on the events of the play, considering Trudeau’s federalist legacy and his controversial invocation of the War Measures Act during the October Crisis in 1970.
André explains that all of the chosen targets have been carefully researched in order to avoid any damage to human life. Yet, his actions and language resonate with the activities of the FLQ, which even in the years prior to the October Crisis of 1970, was executing terrorist acts, including bombings and robberies, that resulted in several deaths. In 1965, members of the FLQ were arrested for their plot with the African-American Black Liberation Front to bomb the Statue of Liberty (Stewart). André’s language throughout the play is echoed in the FLQ Manifesto that appeared four years after the play’s writing, during the October Crisis:

Nous avons cru un moment qu’il valait la peine de canaliser nos énergies, nos impatiences comme le dit si bien René Lévesque, dans le Parti québécois, mais la victoire libérale montre bien que ce qu’on appelle démocratie au Québec n’est en fait et depuis toujours que la « democracy » des riches. La victoire du Parti libéral en ce sens n’est en fait que la victoire des faiseurs d’élections Simard-Cotroni. En conséquence, le parlementarisme britannique, c’est bien fini et le Front de libération du Québec ne se laissera jamais distraire par les miettes électorales que les capitalistes anglo-saxons lancent dans la basse-cour québécoise à tous les quatre ans.

…[N]ous serons toujours les serviteurs assidus et les lèche-bottes des big-shot, tant qu’il y aura des Westmount, des Town of Mount-Royal, des Hampstead, des Outremont, tous ces véritables châteaux forts de la haute finance de la rue St-Jacques et de la Wall Street, tant que nous tous, Québécois, n’aurons pas chassé par tous les moyens, y compris la dynamite et les armes, ces big-boss de l’économie et de la politique, prêts à toutes les bassesses pour mieux nous fourrer.

Many of the same issues raised here – reference to class struggles; hostility toward British parliamentarianism; anger at the perceived servitude of the Quebeçois to the English-Canadian business influences; the call to violent methods of dynamite and guns – are prefigured in the play. Some of the similar language that appears in the play includes references to the workers of Québec as “esclaves” (99), the “à-plat-ventrisme devant
l’Anglais,” (102) and the pinpointing of Westmount as an offensively anglophone location (53).

Gélinas’s consideration of the complicated conflict between federalists and separatists also involves a debate over the need to perform criminal and violent acts in order to prove one’s point. André’s uncle warns: “André, tu fais mine d’oublier une nuance capitale qu’à titre d’avocat tu ne pourrais ignorer sans mauvaise foi….Le tort des autres ne te donne pas le droit de commettre une action formellement criminelle aux terms de la loi” (85). However, André refuses to listen. He conceives of the law as unjust, an amorphous manifestation of power that is the instrument of an oppressive government:

Assurément, je la connais cette loi-là : c’est la loi du plus fort, qui a tellement peur à son derrière qu’il refuse à l’accusé politique le traitement particulier que les tribunaux lui accordent dans tout pays vraiment civilisé. Elle est méprisable, cette loi-là, mais elle est claire. (Il s’adresse à Nicole.) Elle stipule que si tu veux libérer les tiens de ce que tu considères – à tort ou à raison mais en toute conscience – comme une servitude humiliante, le système judiciaire du gouvernement de Sa Gracieuse Majesté te coffrera pêlemêle avec les assassins de droit commun, les prostituées et les incendiaires. Mais on peut, pour diffuser les bienfaits de l’impérialisme américain, zigouiller des civils par milliers au Viêt-nam et s’en tirer avec la bénédiction officielle du même gouvernement. (86)

Pierre believes that separatist beliefs should be tested through the democratic system, but André insists that “la belle argent” prevents this (80). Yet, despite his denunciation of the government, André also displays a certain amount of faith in individual judges. When confronted with the reality of disbarment and prison time once he turns himself in, he believes that his judge might remember the principle of equity: “L’équité, pure et simple, qui, elle, tient compte des circonstances, des intentions véritables et de la raison universelle” (87). Further, André believes staunchly in his own brand of vigilante justice, telling his father: “Ce qui est juste finit toujours par arriver…” (103). André’s rejection of established laws in search for a higher truth gives him much in common with the
vigilante *juge d’instruction* heroes of French fictional legal narratives. Generally, André’s character also reflects the mentality of a people willing to revolt, as his core principles hark back to concepts that guided the French Revolution.

The play ends on an ambivalent note, reflecting the political reality of the era. André reveals that he has instructed his younger brother, Larry, to continue the bombings in his place if something goes wrong. Larry bombs the fictional Edward VII monument in Stanley Park, and André gives himself up to the police. Louise, Pierre’s wife, comforts and encourages him: “Pour passer, tes fils t’ont fait rouler dans le fossé. Mais tu ne peux pas rester couché. Leur droit, à eux, de s’affirmer comme des hommes ne t’enlève pas, à toi-même, celui de continuer ta route” (199). Pierre finishes dictating a speech he is to give at the Canadian Club in Toronto, which he ends: “Car ma maison divisée ne saurait périr sans ébranler la vôtre dans ses fondations mêmes….” (120).

Here, it is clear that the anthropomorphization of the political allegory allows the audience to relate to two complex positions. Once again, individual figures, and individual lawyers in particular, humanize general concepts and focalize attention and empathy.

**Conclusion**

In many cases, Canadian writers have found innovative ways to use, abuse, and inflect forms and figures prevalent in the United States. Surprisingly, despite this phenomenon, explicit references to American popular legal culture, as are sometimes found in British, French and even certain German works, are relatively rare in Canadian

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43 Some examples include Rumpole’s frequent references to American culture, including his retirement to Florida (as mentioned earlier in this chapter); Dexter Dias’s references to American court procedure (see my discussion in Chapter 2); references to American lawyers, who “adorent jockey les Colombos” in the French television series *Avocats et associés* (see Chapter 5); French novelist Gilles Perrault’s reference to
literature. Like some of the British narratives studied in the previous chapter, Atwood’s *Alias Grace* and Gélinas’s *Hier, les enfants dansaient* question the relationships between law, power and sovereignty. However, as critical as these works (and Pyper’s *Lost Girls*) are of the legal system, like the British narratives, they do not engage in a criticism of the substantive of the law.

Yet, fictional Canadian lawyers reflect the reality that Canada has a unique legal system, and that our legal professionals are distinct from the American equivalents. Corresponding to the smaller body of fictional legal narratives in Canada, the range of images of lawyers and the legal system is also smaller than those found in the US. Canadian representations lack the poignant heroism of the “virtuous defender” archetype, as well as the over-the-top diabolical criminal nature of the “embodiment of evil” some American lawyers and law firms. As nice as they are, neither the lawyer-protagonists in Deverell’s novels, nor the members of *Street Legal*’s cast can claim the iconic status of Harper Lee’s Atticus Finch. Likewise, the idea of an entire law firm run by the Mafia, like the one in John Grisham’s *The Firm*, seems laughable in the context of the Canadian legal profession. The protagonist of Pyper’s *Lost Girls* may begin as a corrupt individual, but he does not reach the criminal depths of the worst of the American representations. However, the narratives studied here demonstrate that, in this area as in many others, Canadian writers are capable of far more than simply copying American culture.

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lawyers in American movies in *Le dérapage* (see also Chapter 5); German novelist Thomas Hettche’s reference to the differences between jury trials in America and Germany (see Der Fall Arbogast 262). While Atwood quotes several American poets in *Alias Grace*, she does not refer to American legal culture.
Chapter 5

Far from the “Spectacle of the Scaffold”:

The Predominance of Investigation in Anthropomorphizations of French Law

The French approach fictional legal narratives in a very different way. Unlike the strong focus on the lawyer in Anglo-American narratives, the same fascination does not exist for the equivalent legal professional, the *avocat*. *Avocat* narratives do exist, and the influence of American popular legal culture is evident in them, but as I have noted, they are far outnumbered by stories featuring the *juge d’instruction* (“examining magistrate”). Despite the fact that both *avocat* and *juge d’instruction* narratives are sometimes labeled with the term *polar*,¹ *juge d’instruction* narratives as a group have more in common with the *polar* than *avocat* narratives do. While less popular than *policier* novels, films and television shows, *juge d’instruction* narratives abound in French culture, and often follow the generic conventions of either the classic whodunit or the hardboiled detective story. However, with the exception of representations in television shows,² *avocat* and *juge d’instruction* figures are often tragic and ineffective, and many resort to vigilante means in order to accomplish what they cannot do through the legal system.

While the discipline of law and culture is burgeoning in North America, François Ost quite rightly points out that “« [l]e courant droit et littérature », très développé aux États-Unis, est encore embryonnaire dans les pays de langue française” (7). Jean-Pierre Ryf has also commented that the subject “n’est d’ailleurs pas nouveau et il fait même l’objet depuis quelques années de travaux universitaires, d’ailleurs plus développés aux

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¹ The term is derived from “*policier*” and defined as a “[r]oman ou film policier” (Atilf.fr), equivalent to “detective fiction.”
² Like certain American and Canadian programs, television series studied in this chapter present very positive images of French *avocats* and *juges d’instruction*. 
There is, in fact, comparatively little theory available on law and culture in French, beyond Ost’s compilation of essays, introductory texts by Philippe Malaurie (1997) and Jean-Pierre Ryf (2004), an issue of CinémAction dedicated to “La Justice à l’ecran” (2002) and a few other ad hoc scholarly articles that touch on the subject. 3

Despite this, there are many French narratives that develop the interaction between law and culture as richly as any in the English language. Yet, the American movement has largely neglected French narratives. While Camus’s L’Étranger has been a favourite in the movement, and some theorists have taken note of the differences in the legal systems and the distinctness of the juge d’instruction (see, e.g., Weisberg and Posner), there are few studies dedicated to representations of avocats or juges in more recent works. More specifically, there has been no real consideration of why the figure of the lawyer is so popular in Anglo-American culture, while the avocat is not as popular in French culture, but the juge d’instruction is.

However, apart from the texts listed above, which have obviously been influenced by the American movement, the French have not been ignorant of the interactions between law and culture. For example, Michel Foucault’s genealogical approach in Discipline and Punish: The Birth of the Prison is directly applicable to an analysis of French popular legal culture. Foucault maps the decline of the spectacle of public executions and other forms of public capital punishment in France. His genealogical study begins with a graphic description of a 1757 torture and execution, and continues:

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3 The existing French texts cover broader topics and offer more general analyses than the often very specialized work done in the United States. Interestingly, apart from Ryf’s book, none of the French texts concentrates solely on French culture – they also explore Anglo-American culture, from Shakespeare (Maularie, Ost) to the recent Hollywood movie Shaft (Ortoli).
“If torture was so strongly embedded in legal practice, it was because it revealed truth and showed the operation of power [i.e., of the sovereign]….It also made the body of the condemned man the place where the vengeance of the sovereign was applied, the anchoring point for a manifestation of power, an opportunity of affirming the dissymmetry of forces” (55). The “spectacle of the scaffold” was a mechanism of power, of the sovereign exerting itself in ritual display (57).

However, by the second half of the eighteenth century, philosophers, theoreticians of the law, lawyers and parlementaires were calling for an end to public executions (73). Foucault claims that the decline of public torture and execution also marks a slackening of the hold on the body by the monarchy and its agent, the court system. He argues that the body was systematically removed from the act of judgment, and that “punishment, then, will tend to become the most hidden part of the penal process” (10):

As a result, justice no longer takes public responsibility for the violence that is bound up with its practice. If it too strikes, if it too kills, it is not as a glorification of its strength, but as an element of itself that it is obliged to tolerate, that it finds difficult to account for.

…

Now the scandal and the light are to be distributed differently; it is the conviction itself that marks the offender with the unequivocally negative sign: the publicity has shifted to the trial, and to the sentence; the execution itself is like an additional shame that justice is ashamed to impose on the condemned man; so it keeps its distance from the act, tending always to entrust it to others, under the seal of secrecy. (9-10)

While Foucault is correct in identifying the trial and sentencing as the modern sites of publicity in terms of media attention, this is not borne out in contemporary French legal narratives, in which courtroom scenes are relative rare.

Foucault’s interest in the trial is perhaps most evident in Moi, Pierre Rivière, ayant égorgé ma mère, ma soeur et mon frère ... : un cas de parricide au XIXe siècle

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4 The death penalty was finally abolished entirely in France in 1981.
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(1973), a collection of documents and essays pertaining to a triple murder that occurred in 1836, which he published with a group of his research assistants. The book begins with a brief introduction by Foucault, followed by collected court documents related to the case, chronologies of events, Rivière’s memoir⁵ and ends with commentaries by Foucault and his research assistants. Foucault writes that the fascination with the case began when “[n]ous voulions étudier l’histoire des rapports entre psychiatrie et justice pénale” (9). In examining the documents, he notes the conflicting discourses of the doctors, the judges, the lawyers, Rivière, and the villagers. Each discourse represents a different interest, and rather than a unified text, the case file presents “une lutte singulière, un affrontement, un rapport de pouvoir, une bataille de discours et à travers des discours” (12). Foucault writes: “Je crois que si nous avons décidé de publier ces documents, tous ces documents, c’est pour dresser en quelque sorte le plan de ces luttes diverses, restituer ces affrontements et ces batailles, retrouver le jeu de ces discours, comme armes, comme instruments d’attaque et de défense dans des relations de pouvoir et de savoir” (12).

With regards to Rivière’s memoir, Foucault provided very little commentary, stating: “Ce discours de Rivière, nous avons décidé de ne pas l’interpréter, et de ne lui imposer aucun commentaire psychiatrique ou psychanalytique. D’abord parce que c’est lui qui nous a servi de point zéro pour jauger la distance entre les autres discours et les rapports qui s’établissaient entre eux. Ensuite parce qu’il ne nous était guère possible d’en parler sans le reprendre dans l’un de ces discours (médicaux, judiciaires, psychologiques, criminologiques) dont nous voulions parler à partir de lui” (14). Further, Foucault emphasized the shaping of the narratives that composed the event. In a later

⁵ Which begins with the sentence the book takes for its title.
interview, he explained how the narratives of the villagers, the acquaintances of Rivière, made “the transition from the familiar to the remarkable, the everyday to the historical”: “What people had seen with their own eyes, what one muttered to another, and all the tales that spread by word of mouth within the confines of a village or district became universally transcribable by becoming out of the ordinary, and so ultimately became worthy of setting down on paper in print: the transition to writing” (Foucault Live 205). It is in this way that he documented the transition of the oral to the written, of the everyday to the historical.

The approach Foucault took to putting together Moi, Pierre Rivière is strikingly similar to the approach André Gide took to his 1930 essay, “L’affaire Redureau.” Both texts present evidence through the use of court documents, press coverage and pathologist’s reports. Furthermore, both texts recount eerily parallel tales – both are stories of a young, male farm labourer (Redureau was a teenager and Rivière was twenty) who killed several people in his household (Redureau killed seven people, including his employers, their small children and the maid; Rivière killed three of his own family members) by slitting their throats (Redureau used a grape bill and Rivière used knives). In the Redureau case, psychologists and the jury considered whether the murderer was insane, but concluded that he was not. Similarly, Foucault notes that the jury believed Rivière to be “plus monstrueux qu’insensé” (274). Like Foucault, Gide did not want to impose his own narrative on the case, and simply collected the material and arranged it in chronological order. Given the striking similarities between the nature of the crimes, but also in the approaches taken toward the presentation of the material, it is surprising that Foucault makes no mention of Gide’s essay.
In any case, Foucault later explained another motive behind the book in an interview:

For me the book was a trap. You know how much people are talking now about delinquents, their psychology, their drives and desires, etc. The discourse of psychiatrists, psychologists and criminologists is inexhaustible on the phenomenon of delinquency. Yet it is a discourse that dates back about 150 years, to the 1830s. Well, there you had a magnificent case: in 1836 a triple murder, and then not only all the aspects of the trial but also an absolutely unique witness, the criminal himself, who left a memoir of more than a hundred pages. So, to publish a book was for me a way of saying to the shrinks in general (psychiatrists, psychoanalysts, psychologists): well, you've been around for 150 years, and here is a case contemporary with your birth. What do you have to say about it? Are you better prepared to discuss it than your 19th century colleagues?

In a sense I can say I won; I won or I lost, I don't know, for my secret desire of course was to hear criminologists, psychologists, and psychiatrists discuss the case of Rivière in their usual insipid language. Yet they were literally reduced to silence: not a single one spoke up and said: "Here is what Rivière was in reality. And I can tell you now what couldn't be said in the 19th century." Except for one fool, a psychoanalyst, who claimed that Rivière was an illustration of paranoia as defined by Lacan. With this exception no one had anything to say. But I must congratulate them for the prudence and lucidity with which they have renounced discussion of Rivière. So it was a bet won or lost, as you like…. (Foucault Live, 203)

However, given the rather foreboding comments Foucault made regarding psychiatric and psychoanalytic discourses in the book’s introduction, it is perhaps understandable that “the shrinks”⁵ were reticent to come forward to comment on the documents.

According to Foucault, along with the decline of the hold on the body, there has, in general, been a decline of the role of the ‘law’⁷ and its replacement by disciplinary techniques, its operation “more and more as a norm,” and its incorporation “into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory” (Discipline and Punish, 144). His later writings stress the

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⁵ Foucault uses the term “les psy” in the original French version (Dits et écrits 3: 97).
⁷ Foucault’s conception of ‘law’ is “the stipulation of general rules,” according to Hunt and Wickham (22).
emergence of ‘government’ and ‘governmentality,’ concepts that function through the employment of “tactics rather than laws, and if need be to use the laws themselves as tactics” (qtd. in Hunt and Wickham 52). Further, Foucault emphasizes the effects on the act of judging with the emergence of the norm:

the internal dislocation of the judicial power or at least of its functioning; an increasing difficulty in judging, as if one were ashamed to pass sentence; a furious desire on the part of the judges to judge, assess, diagnose, recognize the normal and abnormal and claim the honour of curing or rehabilitating. In view of this, it is useless to believe in the good or bad consciences of judges, or even of their unconscious. Their immense ‘appetite for medicine’ which is constantly manifested – from their appeal to psychiatric experts, to their attention to the chatter of criminology – expresses the major fact that the power they exercise has been ‘denatured’; that it is at a certain level governed by laws; that at another, more fundamental level it functions as a normative power…. But conversely, if the judges accept ever more reluctantly to condemn for the sake of condemning, the activity of judging has increased precisely to the extent that the normalizing power has spread. Borne along by the omnipresence of the mechanisms of discipline, basing itself on all the carceral apparatuses, it has become one of the major functions of our society. The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the ‘social-worker’-judge; it is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behaviour, his aptitudes, his achievements. (Discipline and Punish 304)

The portrayal of avocats and juges d’instruction in certain French fictional legal narratives reinforces and perpetuates this increasingly normative influence of law. Some cultural representations of law attempt to bolster law’s fading capabilities and reinstate public confidence in the court system. This is not achieved through law itself, but through techniques of normalization via mass culture. Further, it is clear that French legal narratives fall far from the “spectacle of the scaffold.” Showing the process of investigation rather than focusing on adjudication or punishment marks the shift away

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8 Witness the positive representations of law found in French television programs.
from the public spectacle of the execution and towards disciplining by the norm. Along with the individuation of those subjected to the legal system (prisoners, accused, etc.) has come an individuation of those who make up the legal system as well. The anthropomorphization of law gives society human figures that are easier to understand than the vague concept of a monolithic power.

Foucault’s conception of the subordinate position of law in contemporary society has drawn criticism on the basis that his “tendency to marginalize law contrasts sharply with the major drift of twentieth-century thought that has invested law with an increasingly central role in modern society” (Hunt and Wickham 59). However, it is important to examine this criticism in light of the differences between legal systems, and particularly in view of the portrayals of the legal system in contemporary French culture.

**Procedural and Cultural Differences in French Legal Culture**

As discussed in Chapter 1, in Anglo-American culture the paradigm of the law is the trial (Fernandez), but certain cultures are more “trial-interested” than others (Clover 97). In contrast to Foucault’s (and the French media’s) interest in the trial, the predominant focus in French fictional legal narratives is on the pre-trial investigation. The trial is much less prominent in part because its legal function is different. To begin with, in comparison with North Americans’ fixation on the lawyer, the French have granted a much smaller role to the avocat in literature, film and television, where the popular legal figure, as I have been showing, is the juge d’instruction. The role of the juge d’instruction is an investigative one, although the avocat is also shown in investigation mode. Further, avocats are sometimes shown arguing cases in the courtroom, but oral advocacy is rarely a primary part of the plot, and is more often used
as a setting or backdrop for the rest of the story. Generally, the trial is not the predominant fictional mode of envisioning law in France – it is the investigation. For North Americans, conditioned to the trial scene, this may seem odd. There are two main explanations for the comparatively rare appearance of the *avocat* as a protagonist, but these factors are not mutually exclusive. First, procedural differences in the French court system render the trial inherently less dramatic, and the *avocat* has a smaller role to play within it. Second, cultural differences in the status of the *avocat* make this figure a less compelling protagonist than the North American lawyer.

Procedural differences between the two systems provide the most obvious explanation for the differences in cultural representations. In *Man in His Original Dignity: Legal Ethics in France*, John Leubsdorf explains that in the Anglo-American adversarial system, the lawyer plays a much larger role in gathering and presenting facts than in the French inquisitorial system, where the judge investigates facts much more actively both at the pre-trial and trial stages (81). The *avocat*’s role in the trial is generally much more restricted than the Anglo-American lawyer’s, and in criminal trials, the *avocat* faces a conviction rate approaching ninety-five percent (presumably because the investigatory proceedings are so thorough) (83). In criminal matters, the judge is responsible for leading all evidence at trial, a task undertaken by the lawyers in the Anglo-American system. In France, the *avocat* must get evidence from the *dossier* prepared by the *juge d’instruction*. This differs greatly from the work of the Anglo-American defense lawyer, who has the right to lead evidence at trial, and is not required to disclose relevant evidence to the prosecutor. Further, parties and witnesses cannot be

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9 My point here is not to suggest that investigation does not occur in Anglo-American fictional legal narratives, but rather to highlight the relative lack of advocacy as part of the *avocat*’s role.
compelled to give evidence (although they can in criminal matters), meaning that there is no cross-examination in civil trials. Consequently, the French civil trial lacks the dramatic tension between the lawyer and the hostile witness, given the less theatrical process of simply submitting documents to the court.\(^{10}\)

Further, the legal profession has historically been fragmented into many categories in France, and still remains more divided than the North American profession. The *avocat* and the *avoué* (originally responsible for the solicitor’s work involved in litigation: drawing and filing documents) merged in 1971 (Karpik xi). However, *notaires publics* (responsible for real estate conveyancing, wills and estates, and some private client tax planning), *conseils en propriété industrielle* (responsible for patent and trademark law), and *juristes d’entreprise* (in-house lawyers) still practice types of solicitor’s work normally done by lawyers in North America (Buchman 4).

Cultural perceptions of the *avocat* also differ greatly from the cultural perceptions of the Anglo-American lawyer. The *avocat’s* status in society has shifted considerably since the height of the profession’s power in the Middle Ages. The history of the *avocat* is marked by highs and lows of influence and authority, punctuated by a brief disappearance of the bar altogether during the French Revolution. The most recent low came in the mid-twentieth century, but recently, *avocat’s* ties with the business community have led to a return to social consequence (Karpik 1). Certainly, French literature has had notable *avocat* characters in the past,\(^{11}\) and the lawyer appears in non-

\(^{10}\) Further, there are no live witnesses in the French civil trial, making it procedurally closer to the Anglo-American appellate argument (Leubsdorf 84). Each *avocat* explains the case in detail, presenting the panel of judges with written documents (letters, contracts, written minutes, etc.) on which his or her client relies, and which s/he has previously disclosed to opposing counsel (85). This naturally leads to a much less gripping narrative account of the trial process.

\(^{11}\) E.g. Honoré de Balzac’s Derville (Le Colonel Chabert, 1832) and Rastignac (Père Goriot, 1835).
fiction as a celebrated hero (even if self-celebrated).12

Leubsdorf also maintains the French legal profession holds a higher “virtuous ideal” for itself than its North American counterpart, and postulates that the differences between legal systems might come from different ways of “imagining law”:

People in the United States think of law as pragmatic adjustment of competing interests by legislatures and courts, resulting from the political struggles of groups brought together by shared economic or other concerns. This pluralistic view is no longer academically trendy, but is nevertheless widely shared.13

The French, by contrast, see law as a system of abstract moral decrees, promulgated by “the legislator,” a mythical figure going back to Rousseau if not Plato, exemplified by Napoleon, and still flourishing in legal texts. Outside this realm of enduring principle, known as *le droit*, the current legislature works its political will in laws—not, until recent decades, subject to judicial review—and the government exercises extensive regulatory powers, but is subject to review only in a special administrative tribunal. If these huge generalizations have any merit, they might explain why *avocats* paint themselves in a morally idealized form as denizens of the land of *droit*, somewhat like the paintings of Poussin or David, as opposed to the Ashcan Realism of the United States. (55)

The role of the *avocat* seems relatively uncomplicated and rather positive in comparison to North American lawyer portrayals. Further, Leubsdorf claims that there is none of the self-deprecating/self-loathing or demonization that exists in American films, and that the image of the “lawyer as fiend” is missing in France: “United States pictures of the lawyer differ even more strikingly from French portraits in their dark tints. Far from a paragon of virtue, the lawyer emerges from United States sources as a threat to all around him. The law governing lawyers seeks to control this threat, not as in France to guide *avocats* along the path to perfection” (Leubsdorf x). However, if *avocats* picture themselves as

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13 Cf., Ewick and Silbey’s *The Common Place of Law: Stories from Everyday Life*, which identifies three different narratives in people’s view of the law: (1) that people view the law as magisterial and remote; (2) that law is a game that can be manipulated to one’s advantage; and (3) that law is an arbitrary power that can be actively resisted.
“morally idealized,” not every avocat narrative paints them as such. It is true that French legal narratives generally paint a rosier picture of the avocat than the Americans do of the lawyer, but there are still certain French avocat narratives that are influenced by the dark tints of the American tradition, even if the portraits are not entirely black.

Consequently, American theory in the law and culture movement is often not applicable to examining French legal culture. Another American critic, Ralph Berets, writes, “[m]ost law-oriented films do not focus on judges as central figures, in part because the roles of lawyer are far more dynamic, and therefore, dramatic” (476). The inverse is true in French culture, where the juge d’instruction has the inherently more dramatic role. The investigation is often quite dramatic, and there are elements of it that can be very theatrical. For instance, the juge d’instruction has the right to stage a physical reconstitution of the crime – the accused is forced to reenact his physical movements through the alleged events, a practice which “often demonstrates to the accused or to a witness the absurdity of maintaining a false version of the facts and so leads him to admit the truth” (Anton 442). There are occasional parallels drawn between the courtroom and the stage, but these references are invariably found in work that shows a consciousness of American popular legal culture, where the author refers explicitly to some aspect of the American trial or American lawyers.

The self-reflexive nature of legal narratives that we saw in Chapter 1 works in different ways in French legal culture. W. Lance Bennett and Martha Feldman note: “The interpretive powers of stories take on special significance in the courtroom. The overriding judgmental tasks in a trial involve constructing an interpretation for the defendant’s alleged activities and determining how that interpretation fits into the set of
legal criteria that must be applied to the defendant’s behaviour” (qtd. in Black 35). Since the courtroom does not figure that prominently in French fiction, this comment is also limited to Anglo-American popular legal culture. Stories about lawyers in France do not focus on the process of the trial – nor do they focus on the lawyer’s narrativization of facts to produce a story, as so much North American legal culture does. There is less concern with “constructing an interpretation,” and less consciousness that oral advocacy takes its material not directly from raw facts, but from language. In general, the courtroom is simply not the primary venue for the finding of the truth in French culture.

**The Avocat in French Film**

French *avocats* make only occasional appearances as protagonists in fictional narratives, and it is even rarer that the profession itself impacts a narrative’s plot. Unlike the popularity of the American lawyer in film, there are only a handful of films that feature the *avocat* as a protagonist: “Très présent dans la cinématographie américaine, l’avocat l’est moins dans celle d’autres pays, signe de la place prépondérante qu’ont pris la loi et l’ordre aux Etats-Unis” (Bifi.fr). While it is true that the *avocat* has less of an onscreen presence in other countries, the implication that “la loi et l’ordre” are less paramount in French culture is questionable, given the popularity of the *juge d’instruction* as a figure in film, television and literature.

The few films that do feature the *avocat* as a main character do not always show the character deeply engaged in the profession, as is almost always the case in American lawyer movies.³⁴ Where the American lawyer’s case almost always features as the central part of the plot, the *avocat’s* professional duties are often shown as part of the setting, rather than part of the story. British critic Peter Robson comments, “[t]he

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³⁴ See, e.g., *The Firm* or *A Few Good Men*. 
common factor linking courtroom dramas and the private eye lawyer is the dominance of plot over character….Fully rounded personal lives are not crucial for the progression of this kind of fiction” (“Adapting the Modern Law Novel” 203-4). The opposite is true in French culture, where the personal lives of avocats are almost always a primary concern. Some recent successful commercial films focus on the avocat’s personal life in detail, leaving their professional concerns a distant second.15

One avocat-centred film, Généalogies d’un crime (1996),16 plays with generic conventions in a way that is unabashedly postmodern and explicitly intertextual.17 The film revels in its parodic undermining of the American legal thriller, the film noir genre, and psychoanalysis, among other things. Doubling occurs ad infinitum, inverting relationships between the binary pairs of avocat/criminal, analyst/patient, author/reader and eventually obliterating the differences between them. Extensive use of flashbacks (a film noir convention) scrambles the chronological sequence of events so that temporal pieces are jumbled, factual contradictions occur without subsequent explanation, and nonsense peppers the narrative. Généalogies is loosely based on the true story of psychiatrist Hermine von Hug.18 Yet, the film’s main character is neither Von Hug nor her nephew, but fictional avocate Solange. However, the film both installs and subverts legal thriller conventions in many ways, not the least of which is Solange’s gradual breakdown from...

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15 For example, the movies Pour rire ! (1996) and La confusion des genres (2000) both focus on the personal lives of their protagonists. Legal issues do not form an important part of the plot, and the profession of avocat merely serves a backdrop for the avocats’ personal quandaries. Ethical considerations are more of an issue in the drama Rive droite, rive gauche (1984), but the protagonist’s personal life is still a major concern.

16 The film was directed by Chilean Raul Ruiz (who was exiled to France in 1973), and written by French screenwriter Pascal Bonitzer.

17 According to Heta Pyrhönen’s classifications, the film fits into the subgenre of the metaphysical detective story (see my discussion in Chapter 1).

18 Van Hug (1871-1924) was a Viennese psychologist who believed that criminal tendencies solidified in the personality by the time a child reached the age of 5. Von Hug was strangled to death by her 19-year-old nephew, who she’d predicted since his early childhood would eventually become a murderer.
competent avocate to incarcerated criminal.  

Pyrhönen explains that the readability of detective fiction is “grounded in a relationship of complicity between authors and readers that resemble a game played according to a set of rules” (4). The film begins with an invitation to play. There are two kinds of games: one, where the author “strives to preserve the mystery until the end, and the reader attempts to outwit the author”; and another, where the reader plays with the author to better understand the method (68). The latter kind of game exists between the filmmaker and spectator in this film. In the first two minutes of the film, shots of a young man hiding a knife, followed by the close-up of a wooden board game the film presents first its first clues to the crime it immediately establishes, and then extends explicitly an invitation to the spectator to join in the game and solve the crime. Pyrhönen notes: “This subgenre celebrates the text itself as a mystery to be solved” (22). The obscure board game, lying in darkness, immediately signals that the narrative game, and the solution to the mystery, will be also obscure.

The film plays with the American conventions of the lawyer-protagonist. Shots of Solange in prison frame the main story of the investigation, and she is shown narrating her story to a man who appears to be her avocat. A flashback shows the beginning of her interactions with her client, the accused murderer René. They begin with a game that he maintains Jeanne favoured: “Moi, je serai toi, et toi, tu seras moi.” The I-am-you approach ordinarily allows the detective to identify with the criminal by adopting the other’s perspective and situation: “He produces an image of the opponent’s mind by

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19 For example, one of Solange’s trademarks is that she is known for taking on impossible cases and proving their impossibility by losing them. This plays on the typical image of the American lawyer in popular legal culture, who is supposed to be famous for taking on impossible cases and winning them.

20 The game that appears in the film’s opening shots is the Chinese board game “Go.”
treating his own mind as other to itself and probing into its reactions. He intentionally opposes his mind to itself as a means of conceiving somebody else’s mind. He stands, as it were, face to face with a self-generated picture of the criminal. Imaginative identification is thus based on the detective’s doubling of the criminal: the projected picture looks at him as the mirror image looks at us when we look into a mirror” (Pyrhönen 31). In this case, the relationship is inverted and René uses the doubling technique in order to gain insight into Solange, rather than the other way around.21

Another doubling occurs, this time of the detective and the psychologist. Returning to Solange’s narration of past events, the film shows her investigating René’s case. As Solange reads Jeanne’s journal, her voice narrates Jeanne’s words. Flashback scenes show René’s childhood, in which Solange becomes Jeanne, obliterating the distinction between author and reader. Jeanne’s journal is essentially an extended record of her nephew’s criminal tendencies – the flashbacks show Jeanne’s analysis of what she takes to be René’s aberrant behaviour from an early age. In Jeanne/Solange’s narration, the psychologist “takes over the position and narrative function of the detective, a shift that Pyrhönen notes is common in modern detective stories (80).”22

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21 At this point, the original narrative interrupts the flashback for a moment, and Solange says to her avocat: “J’ai commencé à penser comme Pascal, à voir comme Pascal.” Her avocat corrects her, noting that she meant to say “René,” drawing attention both to the substitution of René for her son and a possible reference to Blaise Pascal. Thinking like Pascal may entail a departure from reason and a reliance on feelings (in Pascal’s case as proof of God’s existence), as indicated in his famous maxim from the Pensées: “The heart has its reasons of which reason knows nothing.”

22 Jeanne’s rival, psychologist Christian Corail, reiterates the theme of psychologist-as-detective in comparing his job to that of juge Verret. The following exchange between Corail, Solange and juge Verret (whose connection with the case and relationship to Solange are never fully explained) occurs when the three are lunching together. Corail says: “Nos métiers se ressemblent beaucoup. Seulement pour les orthodoxes, comme Jeanne, le sujet est coupable depuis le début de sa mise en examen. Et pour les autres comme moi, il ne l’est eventuellement qu’à la fin. Derrière chaque science humaine se cache le droit, vous savez.” Juge Verret replies, “Et derrière le droit se cache les contes de fées.” The juge’s rather cryptic assertion accords with Fitzpatrick’s view of the law as a system based on myth.

Corail’s character plays with intertexts to the extreme – he connects every person he meets with a literary character, or several, and often these references are obscure. For example, as Corail walks into
The resistance to the conventions of American fictional legal narratives is evident in the film’s courtroom scene. René’s entire trial is represented in a twenty-second montage of courtroom sketches, accompanied by a three-sentence voice-over by Solange. She narrates simply that the trial went as anticipated, that René was acquitted and that the acquittal pleased them. To celebrate the win, Solange holds a cocktail party at her office. Led by Georges, the entire Société commits suicide by poisoning their own champagne. The motivations behind the mass suicide largely remain a mystery, and Georges dies while commenting on the quality of the champagne, highlighting the ridiculousness of the situation. Meanwhile, Corail gushes: “Cet homme est un vrai Socrate, le Socrate de notre époque, avec un rien d’Empedocle.” The reference to Socrates is ironic when applied to the paranoiac, ineffectual Georges, and draws attention to the nonsensical and overreactive nature of the Société’s mass suicide.23

The film continues with more cryptic references and further complications to the doubling. Following the mass suicide, René moves into Solange’s house. The doubling between René and Solange’s dead son Pascal takes a disturbing twist, as her voice-over Solange’s office, he looks around, commenting on the surroundings: “Je vous imaginais travaillant dans un cadre très différent, plus proche de Kafka. Ça fait plutôt Musil. Non, pas vraiment. C’est de Balzac. C’est un croisement de Balzac et d’Akutagawa. Ça donne Paul Auster, New York au moins. Robbe-Grillet ou quoi?” Corail identifies key aspects of Solange’s character that are drawn from literature featuring other lawyers, detectives and legal issues. Corail then goes on to tell Solange’s boss, Mathieu Toubian, that he’d seen him on television the week before. Mathieu replies that it was not him, but Toubiana (a film critic and former editor of the Cahiers du cinéma, currently the director of the Cinémathèque française). For the reader in the know, these references act both as a sort of code by which to read the other characters and their situations, and as an inside joke. Yet, less sophisticated spectators can also laugh at Corail’s deliberate erudition, the relative obscurity of his references (especially for a North American audience), and the seriousness with which he takes himself.

23 The reference to Empedocles invokes that philosopher’s death by throwing himself into a volcano in order to fool people into believing he had transformed into an immortal god. Ultimately, Empedocles was foiled by the volcano, which threw back one of his sandals, thereby revealing his deception. Empedocles is known as “a shamanic magician, a mystical theologian, a healer, a democratic politician, a living god, and a fraud” (The Internet Encyclopedia of Philosophy 2006). In complimenting Georges, Corail again provides a key with which the educated spectator can de-code the scene, and shares another laugh with those erudite enough to understand the reference.
announces: “Devant les autres nous jouions le mère et le fils. En privé, nous jouions à l’amour fou.” Corail invites Solange to visit a “museum” he has created, in which series of framed photographs hang on the walls. Corail states that his “mnemosyne” is a genealogical documentation of the crime that she’s investigating. He states: “Les hommes croient vivre les histoires. En réalité, c’est les histoires qui possèdent les hommes. Il suffit de quelques petites manipulations et l’histoire cesse de prendre et s’évanouit dans la mer.” Again, this comment is cryptic enough to be interpreted in several different ways, but one possible reading is that it is an ironic statement drawing attention to the self-fulfilling narrative created by Jeanne’s diagnosis of René at a young age, and to the story Solange has created to explain Jeanne’s death.

By the end of the film, Solange has completely lost the highly developed reasoning skills with which she began. Back at Solange’s home, René enters and demands money. They play the *I-am-you* game a final time, after which René admits to killing Jeanne.²⁴ Solange describes her last six months with René, during which she says that he drained her savings. A flashback shows her last interaction with him: Solange, outraged by René’s behaviour, stabs him to death. The action then returns to Solange and her avocat sitting in the prison room; the avocat reminds her that she’d stabbed René forty times. The avocat then tells her that he plans to plead insanity; Solange answers by saying that René had inherited everything from the Société, but that she is now the sole heir. The avocat leaves, completing the inversion of Solange’s identity from avocate to criminal. The film’s final shot is a close-up of the Go board, this time filled with pieces, signifying that the game is complete, despite whatever feelings of dissatisfaction with the

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²⁴ A flashback depicts René’s version of the crime, but it is inconsistent with Georges’ account of the evening. This throws some doubt on the reliability of these flashbacks as accurate reports, and on René, Solange and Georges as reliable narrators.
ending the spectator might have. The mysteries of the film are endless – it is a game that could be played infinitely with no final resolution or definitive interpretation.

In *Généalogies*, the I-am-you approach does not lead to the gathering of information and the solution of the crime, as it is supposed to do: “Besides achieving the primary goal of capture, in many detective stories investigators knowingly use the I-am-you approach as a means of analyzing the criminal’s role(s) in order to increase their knowledge of how idiosyncratic behaviour can be modeled and made accessible to further elaboration and use” (Pyrhönen 43). However, in this case, rather than helping Solange bring Jeanne’s killer to justice, doubling confuses her continuously, allowing René to manipulate the situation and evade punishment. Solange provides an effective defense of René, not through her own intellectual prowess, but because he has fooled her. Not only do the usual techniques of investigation fail, but they cause considerable damage. The legal system fails to identify or punish a killer, and perhaps worse, Solange’s status is completely reversed. She begins as a sane, functioning member of society, but by the end of the film, she has become insane and incarcerated.

**The Avocat in Contemporary French Literature**

The *avocat* appears as a protagonist even less frequently in contemporary French literature than in film. Gilles Perrault’s novel, *Le dérapage* (1987), is one of the few French novels with a plot similar to an American legal thriller. After being acquitted of his parents’ murder, young Frédéric Chapelin-Tourvel returns to the scene of the crime with his *avocat*, the novel’s unnamed narrator. The *avocat*, doubtful of Frédéric’s innocence, spends the duration of the novel asking the questions “Whodunit?” and “Who

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25 The novel was adapted into Jacques Deray’s 1993 film, *Un Crime*, without Perrault’s blessing. The film version removes all the self-reflexivity of the novel, and fits even more neatly into the legal thriller genre than the novel.
is guilty?” However, while the novel follows certain conventions of the classic detective story, it also conveys a similar message as Généalogies, in that conventional methods of investigation fail and the legal system is portrayed as an ineffective method of dealing with crime.

The influence of American popular legal culture is apparent: Frédéric comments that the situation parallels “un classique du cinéma américain : l’avocat paumé que tout le monde roule dans la merde et qui gagne par KO au dernier round” (49). However, while the narrator resembles an American lawyer protagonist in some respects, the novel ignores other conventions of American popular legal culture. For example, rather than focusing on the trial or providing detailed descriptions of courtroom scenes, the novel begins at the end of the Chapelin-Tourvel murder trial, as the jury is about to read the verdict. Here, the narrator highlights the dramatic nature of the courtroom in a manner that is more American than French, with the huissier (the bailiff) opening a door as if in a theatre: “La porte du fond s’entrouvrit sur la calvitie de l’huissier. Ses yeux tristes inspectèrent la scène avec la minutie d’un régisseur de théâtre vérifiant la scène à l’instant du lever de rideau” (7). Frédéric is pronounced not guilty, but shortly afterward, responds to his avocat in a way that throws doubt on his innocence: “Je sus que mes lèvres formaient le mot « coupable » sans que ma voix le prononçât. Souriant, il eut un haussement d’épaules pour dire : « Évidemment »” (11).

The view of the avocat in the novel is far from the “morally idealized form” envisioned by Leubsdorf (55), as I discussed earlier. After the trial ends, Frédéric’s attitude toward his avocat becomes slightly insulting: “Comment s’appelle…votre confrère qui définit l’avocat comme un « marchand de résultats »?” The narrator simply
answers, “Un con” (16). The narrator’s own views of the profession recall René Floriot, “grand avocat des années cinquante” (34), who thought that it was better not to speak to his clients, but simply to rely on the file. The narrator comments: “La justice n’existait pas puisque Floriot avait raison. Elle n’était pas la tentative raisonnée de reconstituer ensemble le puzzle de la réalité, mais une sombre bagarre à propos d’un miroir éclaté dont accusation et défense brandissaient des fragments où se reflétaient des bouts de vérité sans rapport nécessaire avec la vérité” (35). This negative view of justice and the task of courtroom advocacy reflects a more American view of lawyers, but also more consciousness of the constructed nature of legal arguments than is usually seen in French avocat narratives.

The narrator’s role shifts quickly away from advocacy. After the verdict is read, the novel’s action moves from a public to a private space: the Chapelin-Tourvel apartment. Frédéric invites the narrator to share a celebratory drink with him in the apartment, and the narrator agrees, now motivated by a curiosity outside his role as an avocat. Recalling that Frédéric has now inherited the apartment, the narrator begins mentally reviewing the investigation, attempting to decide whether he had correctly interpreted the facts of the case. The shift to the apartment marks a shift of the narrator’s role from avocat to detective. His review of the murder of the parents is further complicated by the arrival of Frédéric’s girlfriend, Franca. Shortly after she appears, Frédéric strangles her and leaves her body in the bathtub for the narrator to find (68). It is obvious that Frédéric is the only person who could have killed her, and the narrator’s role shifts to include that of witness.

The investigatory aspects of the narrator’s role are increasingly diminished, as he
turns into a passive witness and a potential victim. In a panic, instead of immediately calling the police to report the crime, the narrator chooses to stay in the apartment. Unfortunately, just after he finds the body, a tabloid photographer appears outside the window and photographs the narrator with Frédéric, further implicating the narrator as not only a witness, but also as a possible accomplice. Frédéric shows the narrator a secret compartment that his grandfather had constructed in the apartment during the Nazi occupation. The avocat goes down into the hiding place and finds a skeleton (112). Frédéric explains that this is the skeleton of his childhood friend Joël, who Frédéric left to die at age fourteen (117). With this discovery the narrator becomes witness to a second crime. However, the extent of his personal involvement in the case only becomes clear at the end of the novel, when the narrator finally explains that he is Frédéric’s real father. His motives for defending Frédéric finally become clear.

In Le dérapage, the legal system is an ineffective apparatus for identifying or catching any of the murderers in the novel. The courts are unable to correctly prosecute either Franca’s murder of Frédéric’s parents or Frédéric’s murder of Franca and his childhood friend Joel. In this story the avocat is once again unable to deliver justice – Frédéric avenges his parents through vigilante methods, and then avenges the deaths of Franca and Joel through the act of suicide. It is the individual – and not the avocat – who ultimately brings a sense of justice to the events. Although the line between avocat and criminal is not reversed as dramatically as it is in Généalogies, the avocat’s intense personal involvement in the case, especially as the father of the criminal, signals a blurring of that line. Further, his ultimate role in the novel is that of witness, rather than advocate or even investigator.
The *Avocat* on Television

Unlike the plethora of lawyer-centred television shows in North America, there has been only a single French television drama devoted to lawyers: *Avocats et associés*. However, it has been running since 1998 and remains popular. The series began a year after two immensely popular American television series *Ally McBeal* and *The Practice*. Like both of these shows, *Avocats et associés* follows the working and personal lives of lawyers in a small firm, but as a drama, the series has more in common with *The Practice*.

The *Avocats et associés* website describes the show as follows:

*Cette série aborde ainsi de façon concrète et réaliste les petits et les grands maux de notre société.... A chaque épisode, plusieurs thèmes différents sont évoqués ou approfondis, sur des registres tantôt légers ou tantôt plus dramatiques, à partir des épreuves vécues par les clients de nos avocats. Complexité des enquêtes et des procédures, inadéquation du droit ou subjectivité des jugements : à chaque affaire, nos avocats sont donc confrontés aux difficultés de la justice d'aujourd'hui, répondant aux inquiétudes et aux curiosités de chaque spectateur....*(www.avocatsetassocies.france2.fr)

Interestingly, this description mentions that the purpose of the show is to respond to the concerns and curiosities of **each** viewer. By highlighting common concerns, the show aims to appeal to a wide audience. Further, the website identifies a wide range of issues that *Avocats et associés* explores: “A cet égard, les sujets traités sont nombreux et variés : le divorce et ses conséquences, le conflit d'héritage, l'homicide volontaire ou involontaire, le viol, l'inceste, la drogue, le racisme... c'est un véritable scanner de notre société que propose ainsi « Avocats et associés ».” These issues have more than just a legal importance; their significance affects society in other ways, and the show certainly develops the human side of them. Such an agenda differentiates this show from other *avocat* narratives, which are generally less focused on social issues.
The website also identifies *Avocats et associés* as part of “une soirée de polars.” Yet, in comparison to the *juge d’instruction*-centred narratives, the *avocat* figures in this show are hardly what the North American viewer would think of as detectives. Unlike other *avocat* narratives, the primary role of the *avocats* in this show is not one of investigation, but of advocacy. One possible reason that the show is categorized as a detective series is that other existing *avocat* narratives portray *avocats* as detectives. However, *Avocats et associés* is quite similar to North American lawyer shows in terms of the duties of the protagonists, who spend much of their time in court. Especially given the lack of courtroom scenes in other *avocat* narratives, this is rather surprising. However, the court scenes are very close to North American court scenes, with an emphasis on the *avocats’* oratorical skills.

Further, the series is also conscious of differentiating itself from detective fiction. The first episode refers directly to American lawyer series, when the senior partner, Antoine Zelder, berates young *avocate* Caroline Varennes for overstepping her role and investigating a crime on behalf of her client: “Vous voyez trop de series américaines? Vous êtes avocate, Maître. Ici les avocats n’enquêtent pas. Si vous avez besoin de renseignements, c’est dans le dossier que vous devez les chercher. Je sais que certains de nos confrères adorent jouer les Colombos, mais si vous souhaitez rester chez nous, mademoiselle, vous êtes priée de vous conformer à la déontologie du métier” (Episode 1).\(^{26}\) Antoine reiterates his exasperation with American culture at other times in the series, with passing comments like: “On n’est pas en Amérique” (episode 15). However,

\(^{26}\) However, the *avocats* have not only the *dossier*, but also their clients as sources of evidence. Information is often related in client interviews, which are a significant portion of the show’s action. The *avocats* on the show also sometimes become personally involved in the cases they handle and stumble into circumstances where they uncover evidence. Still, they are not shown actively attempting to investigate crime scenes or seeking out witnesses, as a detective would.
he is as consumed with the financial concerns of everyday practice that also crop up in
North American lawyer shows. Antoine constantly reminds the younger members of the
firm to properly bill their clients, and he stresses the importance of keeping wealthy
clients happy.27

In general, the *avocats* are generally shown as sympathetic individuals, and
despite Antoine’s concerns for the financial well-being of the firm, they seem genuinely
interested in achieving just results for their clients. While the other *avocats* are earnest,
ethical characters, Gladys Dupré stands apart as a rare example of an unethical *avocate*.
Gladys routinely uses deceptive means, sometimes to achieve equitable results for her
clients or for other members of the firm, but she also lies and cheats for purely selfish
motives. While unethical lawyer characters abound in North American fictional
narratives, they rarely occur in French culture, and Gladys bears more resemblance to
fictional lawyers on American or Canadian television shows than to other fictional
*avocats*.

As in *avocat* films and in North American lawyer shows, *Avocats et associés*
places an intense focus on the *avocats*’ personal lives and their romantic relationships.
By the show’s second season, every *avocat* in the firm has had a romantic relationship
with one of the other *avocats*. The *avocats* are all relatively young (with the exception of
Antoine Zelder and his replacement character, Serge N’Guyen), good-looking, and the

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27 Another *avocate*, Michèle Berg, unhappy with Antoine’s refusal to make her a partner in the firm,
departs to a large firm at one point in the series (episode 7). Historically, *avocats* did not practice in large
firm settings, and “[t]he American example may have influenced such changes as the legitimation of
multilawyer firms, fee contracts, and partially contingent fees” (Leubsdorf 117). Michèle’s new firm is
aesthetically more modern and open-concept than the *Cabinet Zelder Calvani*’s small, enclosed, elegantly
furnished offices. Finding herself far from the affable atmosphere of the small firm, Michèle utters a bright
“Bonjour,” only to be met by the woman in the office next door with a curt, unsmilng nod. Michèle
comments to another colleague that her new neighbour is probably single and childless, to which her
colleague responds, “Ce sont les meilleures.” Not surprisingly, Michèle returns to the *Cabinet Zelder
Calvani* after two episodes.
senior partners are well off. While they have their difficulties with their cases and their personal affairs, the *avocats* seem relatively happy and successful as individuals.\(^\text{28}\) In general, rather than critiquing the legal system, *Avocats et associés* portrays the *avocats* as effective, competent and normally capable of overcoming the inequities they encounter, even when those inequities affect them as individuals. Through these positive portrayals, the show reaffirms the public’s trust in the law.

**The Role of the *Juge d’Instruction***

The *juge d’instruction* is the more popular legal figure in France, and in contrast to *avocat* narratives like *La confusion des genres* and *Pour rire!*\(^\text{1}\), the *juge d’instruction*’s cases are always an integral part of their narrative’s plot. The *juge d’instruction* has a vastly different role from that of the trial judge, whose role is more similar (but still not exactly equivalent, given the inquisitorial nature of the French legal system) to the Anglo-American judge’s. The *juge d’instruction* oversees only the pre-trial investigation (the “instruction”) in criminal cases, but it has been said that “[t]ypically, this investigation is the real trial” (Leubsdorf 81). The importance of the *juge d’instruction* stems from the necessity of accurately informing the trial judge, who leads evidence at trial rather than the lawyers; since it is the court that controls the evidence at trial, it is also imperative that the court, and not the police, supervises the investigatory process (Anton 442). The *juge d’instruction*’s interests are independent of both the police and the

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\(^{28}\) The *avocats* also become personally involved with their clients at certain points in the series. Michèle becomes romantically involved with one of her clients, a pornographic cartoonist, changing her interest in defending him from professional to personal (episode 2). Further, the *avocats*’ personal involvement in cases sometimes reaches the point where, somewhat like Solange in *Généalogies*, they cross the line from *avocat* to accused. For example, senior partner Robert Calvani is charged with murder after he shoves a complainant in self-defense, and the man subsequently dies (episodes 12 and 13). Later in the series, Robert has sex with one of his clients, a fashion model who has him charged with statutory rape after she reveals that she is fifteen years old (episode 24). However, Robert is acquitted of both charges, and never completely crosses the line to “criminal.”
state prosecutors, and his or her efforts are directed toward a more neutral goal of justice (443).

Certainly, the *juge d’instruction* has traditionally enjoyed a reputation of power; Balzac is said to have claimed that “nothing can stand in his way” (qtd. in Leubsdorf 82, with no reference to the source of the quotation). Yet, the investigation is clearly an important part of the legal process, and is so thorough that 95% of cases that make it to trial get a guilty verdict. The power to investigate is that great in France (83). Still, in only 8% of cases does the *juge* supervise the *instruction* (Hodgson 344), suggesting that the *juge d’instruction* is as overrepresented in popular culture as murder trials are in the Anglo-American system. Further, the prestige of the profession has been lowered over time, and in recent years, the career of the *juge* “has been one of low prestige and low pay…. Citizens have less confidence in the courts than in almost any other French institution” (Leubsdorf 101-2). Yet, in contrast to the *avocat*, French *juges d’instruction* remain popular figures in fictional narratives, and are often portrayed as strong individuals, despite the criticisms of the legal system many French fictional legal narratives display.

**The Juge D’Instruction in French Film**

Two such two films from the 1970s and 1980s feature strong portraits of the *juge d’instruction*: Yves Boisset’s *Le juge Fayard, dit « le shérif »* (1976), and Philippe Lefebvre’s *Le juge* (1983).\(^\text{30}\) These films also demonstrate the functioning of the mutually constitutive relationship between law and literature, in that copyright and

\(^{29}\) In other cases, the *procureur* ("prosecutor") supervises the investigation (Hodgson 343).

\(^{30}\) The film *Le juge et l’assassin* (1976) provides a contrasting example of a *juge d’instruction*. There, the protagonist emerges as a morally hypocritical character, essentially no different from the murderer he pursues.
censorship laws controlled the permissible content of the very same films that in turn help to define (in a very general way) the image of law. The first of these films, Le juge Fayard, dit « le shérif », is loosely based on the actual life and assassination of juge François Renaud of Lyon, who was assassinated in 1975 by Mafia criminals. Renaud’s tenacious pursuit of Mafia cases outside the courthouse walls, and his undercover forays into Mafia territory earned him the nickname “le shérif” (Belleret). The fictionalized juge, Fayard, begins by investigating an ostensibly ordinary case involving a hold-up at a gas station. However, he soon discovers that the case has links to a series of fatal accidents at a factory. Further investigation reveals a massive Mafia scandal involving police corruption, criminal funding of certain political parties, and illegal transfers of cash into Switzerland. During the course of his investigation, the juge is shown aggressively questioning witnesses, investigating crime scenes, and riding around on a motorbike. If not a vigilante, juge Fayard pushes the line of his responsibilities as an examining magistrate. However, as he comes close to breaking the scandal, the film ends when the juge is abruptly shot dead in a parking lot.

Part of the film’s plot also involves the portrayal of an amalgamation of half-a-dozen real-life scandals involving the Service d’action civique (“SAC”), a government agency established by Charles DeGaulle. Despite the film’s stock disclaimer at the end, the SAC sued the filmmakers for defamation. In court, the agency claimed that it had been unfairly portrayed: “Tous les membres du SAC présentés dans le film sont sans exception des truands, assassins proxénètes, militaires déchus, politiciens, policiers véreux. Tous les crimes et délits décrits: hold-up, règlement des comptes, etc., sont

31 “Toutes histoires vécues ou toute ressemblance avec des personnes vivantes ou ayant existé ne seraient que pure coïncidence.”
conçus, organisés et réalisés par des membres de l’organisation requérante. Même le
meurtre du personnage central du magistrat est attribué, de manière équivoque, au
SAC…” (qtd. in Bernert 2). The court agreed, and ordered the replacement of seventeen
references to the agency by “beep” sounds. However, the public had been fully apprised
of the case in the newspapers, so the censorship merely resulted in further public derision
of the SAC. Hostile graffiti were spray painted on the front of a movie theatre showing
the film, and laughing audiences provided their own soundtrack during the censored
parts: “Dans les salles, chaque fois que l’on entend résonner le « bip », les spectateurs se
METTENT À HURLER : « SAC ! SAC ! »” (Bernert 2).

Yves Boisset, the film’s producer, remarked on the underdeveloped state of
French political cinema, and its vulnerability to taboos and political influence, especially
compared to political cinema in the United States and Italy: “Le cinéma américain, dit
Boisset, nous a donné « Les Hommes du président » ce film sur l’affaire du Watergate où
tous les personnages, de Nixon au conseiller le plus obscur, étaient cités nommément,
montrés sur l’écran. De même les Italiens, avec « L’Affaire Mattei » purent révéler par
l’image tout un dossier secret…” (qtd. in Bernert 2). Boisset also remarked, “[e]t on se
rend bien compte, à la lumière d’une affaire comme celle-ci, qu’il serait tout à fait
impossible même juridiquement en France, de faire un film comme « Les Hommes du
président »” (qtd. in “Le Juge Fayard », d’Yves Boisset : « Une fiction où tous les
éléments sont réels »”). Critics placed the film in the category of “fiction de gauche,”
films of the 1970s that “se proposent de balayer, fictionnellement, toutes les institutions
bourgeois en crise, de dénoncer le mauvais fonctionnement du pouvoir, et de servir ou
de cautionner une relance de ces institutions, dès lors gouvernées par un autre pouvoir:
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celui d’une gauche dont le programme aussi bien que les hommes chargés de le mettre en
application sont prêts à se mettre en place, à la place esperée prochainement vacante”
(Toubiana 48). “Fiction de gauche” was criticized by subsequent critics, even described
as “much despised” as “a reformist but essentially conventional cinema”, and contrasted
with “genuinely radical cinema (one that simultaneously questioned film form, the
cinematic institution and the politicoeconomic status quo), a militant cinema
instrumentalised by oppositional groups” (O’Shaughnessy 199). Still, the political
impact of the film is undeniable, even if its form is conventional.

The film’s portrayal challenges traditional notions of the juge d’instruction. Juge
Fayard is also completely unlike Anglo-American conceptions of judges, who are often
portrayed as dignified and intellectual, sitting in a static position on the bench.32
Boisset’s portrait of the young juge d’instruction drew attention to the fact that the
ordinary means of justice were viewed as insufficient to tackle the Mafia’s infiltration
into society at the time. The film underlined the existence of what some viewed as an
elitist system dominated by the bourgeoisie: “Pour Yves Boisset, dont le film est habile et
bien mené, il y a deux sortes de magistrats. Ceux qui occupent les plus hautes places
dans la hiérarchie, procureurs généraux, présidents de chambres et de cours d’appel, et
qui sont des salauds. En plus, il y a les jeunes Turcs du syndicat de la magistrature qui,
eux, sont probes, désintéressés, courageux” (Mohrt). However, others argued that the
constructed martyrdom of Renaud did not accord with reality at all. Journalist Claude
Jaget asserted that Renaud earned the nickname « le shérif » through violent methods of
investigation, including beating suspects. Jaget further stated that Renaud wrongly

32 However, the film also drew criticism on the basis that the thirty-something Patrick Dewaere bore little
resemblance to the actual fifty-something François Renaud (Mohrt).
convicted a man who spent three years in prison; that Renaud caused another prisoner’s mental incapacitation by refusing to respond to the man’s hunger strike and suicide attempt; and that another of Renaud’s investigations resulted in the oversentencing of two prisoners (eight years where the normal maximum was two years). Jaget did not mention that Renaud handled over 1500 cases in eight years (Belleret); nor did he comment on the reality that juges d’instruction are typically overworked and underpaid (Leubsdorf 101-2).

Still, for the most part, the media were willing to canonize Renaud, and the filmmakers willing to corrupt reality enough to attribute plenty of things to the fictional character that had no basis in Renaud’s real life. For instance, Renaud had no interest in pursuing corrupt politicians, and certain events in the film bear more resemblance to the career of another juge, Charette, such as the investigation of a series of industrial accidents. Given the complex reality of Renaud’s life, the fictional representation of the juge d’instruction is an extremely positive portrait, and points toward the glorification of the figure in French popular culture.

Philippe Lefebvre’s Le juge (1983) follows a very similar plot, and also provoked a court battle over its contents. The film is based on the life and assassination of juge Pierre Michel of Marseilles. Similar to juge Renaud, juge Michel earned the nickname, “le flic” (“the cop”), due to his involvement in attempting to crack Mafia crimes. Considered a hero by the French people, he is made by the adaptation of his story into a film into “le symbole de la justice face au crime” for some (Le Gendre). The film fictionalizes juge Michel’s unsolved drug case against Mafia drug dealer Robert Kéchichian. In the film, fictional juge François Muller pursues drug dealer character

33 See the article, “Le juge Fayard dit « le shérif ».”
Antoine Rocca. *Juge* Muller questions suspects aggressively, sometimes threatening witnesses with dialogue such as: “Vous allez parler, Docteur. Je vous garantie que vous allez parler.” However, in his private life, Muller is shown as a family man, preparing for a ski vacation with his kids. He begins to receive death threats in the mail, including a picture of a coffin, but persists in his pursuit of the drug dealer. At the end of the movie, he is gunned down on his motorcycle by a Mafia hitman. As one critic noted, “« Le juge » se termine dans l’air, sans conclusion, ni morale, simplement parce que l’histoire est finie” (Reix). This is certainly a contrast to many other fictional legal narratives, in which the story is a vehicle for commentary about the nature of law or the legal system.

However, I would argue that the film does present a moral. Like *Le juge Fayard*, dit « le shérif », the film demonstrates the ineffectiveness of ordinary means of justice to deal with the pervasive Mafia problems at the time. *Juge* Muller also resorts to tactics beyond his role as an examining magistrate, as the box copy announces: “Quand un juge s’attaque au milieu, il devient flic.” One critic commented: “Pierre Michel « renversait les obstacles et bousculait les habitudes », selon l’expression d’un de ses collègues marseillais. En vérité, il bousculait surtout les truands de haut vol et les gros bonnets de la drogue…. Ce film montre avec justice la solitude du juge d’instruction face à des intérêts puissants, face aux avocats, face à la police et face aussi à une certaine hiérarchie judiciaire qui accepte mal les entorses aux traditions. Enfin, il souligne, par des touches subtiles, le nécessaire et difficile rapport entre la justice et la police” (Duquesne).34 Thus,

34 Despite the public’s general sympathy for the real-life figure, critics were divided regarding the quality of the film. Some hailed the film as innovative: “au carrefour des influences italiennes et américaines, d’un nouveau cinéma policier français” (Meyer). However, another commented on “la médiocrité globale du film.” And another critic disapproved of the film’s formulaic banality: “P. Lefèvre nous propose un de ces films policiers « à la française », sur fond de fait divers réel (l’assassinat du juge Michel), à l’interprétation « correcte » mais qu’il nous semble avoir déjà vu mille fois. Du cinéma en série. Un
the *juge d’instruction* in this case is not only the symbol of justice in the face of crime, but also the symbol of individualism in the midst of a legal system that does not appear to be the most efficient means of achieving just results.

Again, echoing *Le juge Fayard, dit « le sheriff »*, the film sparked controversy when André Fraticelli, a former *avocat* of the real-life drug dealer, sued the filmmakers, demanding the seizure of the film, or alternatively, the suppression of the scenes where Maître Donati (the *avocat* character in the film) appeared. Fraticelli had been implicated in Mafia crimes, but was subsequently pardoned for medical reasons. His lawyer invoked Fraticelli’s honour, his right to privacy, and his medical pardon as reasons for the seizure. Conversely, the producer and director argued that the actor, Jean Benguigui, was a far likeness from Fraticelli. The judge held that the film did not result in the identification of the fictional character with Fraticelli (“Le film « Le juge » ne sera pas saisi”). Thus, unlike the SAC, Fraticelli was unsuccessful in his suit.\(^{35}\)

35 Questions of censorship arose once again in the case of the 1979 film, *Le pull-over rouge*, “inspired by” Gilles Perrault’s 1978 non-fiction book by the same title. Filmmaker Michel Drach chose not to fictionalize the trial of Christian Ranucci, who was executed in 1976 for the kidnapping and murder of nine-year old Marie-Delorès Rambla (whose name the film changes to Elisa Garcia). In the film, as a consequence of police beatings and *juge’s* insistence on his guilt, Ranucci becomes temporarily confused about whether or not he committed the crime, and he confesses. However, six months after his confession, he eventually overcomes this confusion, and vehemently insists that he is innocent until his execution. Near the film’s end, a television station announces that he has received a presidential pardon, but the news is premature, and the pardon is rejected.

Prior to the film’s release, the Rambla family applied to court to attempt to have the film banned. In addition to arguing that infringed on the sanctity of the Ramblas’ private life, the Ramblas’ *avocat* argued that “[i]l est intolérable de voir des officiers de police et un juge d’instruction ainsi discrédités et bafoués” (du Tanney). The court declined to ban the film entirely, but censored four scenes dealing with the Ramblas (“Le « Pull-Over rouge » ne sera pas saisi”), although none of the scenes portraying the police or the *juge d’instruction* were altered. Nonetheless, the municipal counsels of several towns in the Midi region, including Aix-en-Provence, voted to ban the film in its entirety. Emotions of the local residents were particularly strong in towns around Marseilles, where the crime was committed, and Aix-en-Provence, where Ranucci was condemned to death (“Le « Pull-Over rouge » interdit à Aix et à Salon-de-Provence”). The mayor of Salon-de-Provence felt that the film was a caricature of the role of the police and the witnesses, and that there were several “séquences insupportables, notamment en ce qui concerne la police et le juge d’instruction” (“« Le Pull-Over Rouge » : La famille Rambla poursuit son action”).
Beyond instigating legal actions, both films spoke to the French public’s sanctioning of vigilante behaviour by certain judges. While each man is shown as a detective figure, there are also elements that go beyond that of the traditional French “policier” genre. These films present *juges d’instruction* as martyred heroes, revered for their ability to transcend the ordinary limitations of their profession and of the legal system: “Ces hommes de loi comprirent vite l’insuffisance du Code de procédure pénale, furent plus « flics » que les policiers engourdis par l’inaction et les nécessaires compromis. En fait, ces juges, se vouant chasseurs, devinrent gibier. Destins exemplaires et forcément tragiques, faciles à rendre par l’image avec le renfort de l’imaginaire” (Reix). Further, the films create their own interpretations of these men’s lives, and in these stories, their deaths are not meaningless tragedies.

**The *Juge d’Instruction* in Contemporary French Literature**

The *juge d’instruction* also appears as a protagonist more frequently than the *avocat* in contemporary French literature. Foucault’s notion that “[w]e are in the society of the teacher-judge, the doctor-judge, the educator-judge, the ‘social-worker’-judge” *(Discipline and Punish* 304) is played out to the extreme in Hubert Monteilhet’s novel *Mademoiselle le juge* (2000).³⁶ The novel’s third-person narration initially suggests that the title character is Mademoiselle Brigitte Lamotte, *juge d’instruction* in Brugières. Brigitte accidentally runs into a car owned by her teenaged daughter’s philosophy teacher, Émilienne de Couvreuse. It eventually becomes evident that Émilienne, not

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³⁶ Foucault’s concept of the ubiquitous “judges of normality” is also reflected in Paule Constante’s novel *Sucre et secret* (2003). The protagonist is a French woman named Aurore, a writer-in-residence at the fictitious Rosebud University in the southern United States. Aurore becomes fascinated with the case of condemned murderer David Dennis, who claims he is wrongly accused of the rape, torture and murder of 17-year-old Rosebud student Candice. The novel charts the writer’s attempts to prove David’s innocence, although she ultimately fails, and he is executed at the end of the novel. Rather than using the figure of the lawyer or the *juge d’instruction* through which to filter the process of judgment, in this novel, the writer acts as “judge.”
Brigitte, is the “Mademoiselle le juge” to whom the novel’s title refers. Here, the
vigilante tendencies of the protagonist emerge even more strongly than in Boisset’s *Le
juge Fayard, dit « le sheriff »* or Lefebvre’s *Le juge*.

In Monteilhet’s novel, individuals connected with the legal system are completely
ineffective in either preventing crime or bringing crime to justice. Émilienne and Brigitte
become fast friends. When Émilienne is sexually harassed by one of her students,
Philippe Doucet, she confides in Brigitte. The *juge*’s advice is merely to steer clear of the
boy, who has already been accused of participating in the gang rape of a young girl.
Brigitte recommends a lawyer, Maître Gaspard Lumbroso, who writes a letter of warning
to the boy’s father, a prominent politician. However, the letter proves completely
ineffectual, when Philippe comes across Émilienne in the school library on a late night
and rapes her. The advice of both the *juge d’instruction* and the *avocat* having failed her,
Émilienne takes justice into her own hands, charming Phillipe into believing she’s in love
with him, and subsequently murdering him. She steals his father’s memoirs, which tell of
his political corruption, and also takes a large sum of money from the house.

The *juge d’instruction* and the *avocat* are not the only ineffectual individuals in
the legal system portrayed in this novel. The police are also unable to aid in the correct
administration of justice after the murder has been committed. Catagnet of the
gendarmerie is called in to investigate the case, along with Brigitte and the prosecutor,
Delavigne. All three suspect that Émilienne murdered Philippe. Castagnet makes the
detective’s usual logical deductions and traces a path back to Émilienne, then proceeds to
amass evidence to prove that she committed the crime. However, Émilienne outsmarts
the authorities at every step. Her ultimate solution is to seduce the only eyewitness, who
testifies that he saw the murder victim alive after the established time of Émilienne’s
departure on the night of the murder.

Her lawyer, Maître Lumbroso, helps her to create an alternate version of the
“truth,” and has no ethical problem with fabricating narratives for use at trial. He tells
Émilienne: “Mais il y a deux vérités. Celle que le client doit révéler à son avocat afin de
le rendre plus efficace – ainsi que je vous l’avais déjà dit –, et celle que l’avocat
présentera aux jurés. Elles peuvent coïncider ou différer. Mais c’est la seconde qui
importe en fin de compte. Je suis là, si nous en arrivons aux assises, pour faire passer un
récit, dont la troublante vraisemblance permettrait à des jurés influençables,
d’intelligence moyenne et n’ayant pu prendre qu’une vision superficielle à l’affaire, de
vous acquitter sans discussion ou au bénéfice du doute” (155). Here, Lumbroso, who is a
minor character, shows more consciousness of the constructed nature of “truth” than most
of the avocat protagonists discussed earlier. Lumbroso continues:

Depuis que le jury est apparu avec la Révolution, la justice dispose d’un
instrument à double tranchant, aussi mal aiguisés l’un que l’autre, capable
d’acquitter des coupables ou de condamner des innocents : la fameuse
“intime conviction”.
Sous l’Ancien Régime, on ne condamnait que sur les preuves et, de ce
fait, le filet laissait passer une foule de poissons. (Surtout les gros !)
Aujourd’hui, cette “intime conviction”, dont les jurés n’ont pas à rendre
compte, est la plus belle expression de l’irresponsabilité des responsables.
On joue à la roulette avec la liberté des gens après avoir joué près de deux
siècles avec leur tête. (155-6)

Again, at the end of the novel, the avocat’s relationship to the truth comes out, as
Émilienne says: “Et quand cela serait, la vocation de l’avocat n’est-elle point de faire
acquitter des meurtriers pour qu’ils puissent poursuivre impunément leur carrière? Plus
l’accusé est coupable, plus le mérite de l’avocat est grand de l’avoir tiré d’un mauvais
pas…. Par profession, vous n’avez pas droit à la vérité, dont vous n’êtes pas digne de
voir la lumière” (225). As is popular in other French legal narratives, the trial scene is very short – less than four pages in this novel. After her acquittal, Émilienne “distraitement” throws her cigarette on a pile of oily rags (232) and accidentally burns down the school. In the wake of the failure of the legal system to provide her with either protection or justice, Émilienne, the actual “Mademoiselle le juge” of the novel’s title, has taken matters into her own hands and executed justice vigilante-style.

Xavier Patier’s 1988 novel, Le juge, examines similar themes of judicial errors and the failure of the legal system. However, in this instance, the juge d’instruction is not presented as an heroic individual, but rather as a weak, ineffective person. Twenty-four-year-old juge d’instruction Lucien Violet is assigned the task of investigating a murder case, and feels pressured to bring the case to an expeditious conclusion. His friend and unofficial mentor, the well-respected retired juge Chapelle, advises Violet: “Il y a deux façons de perdre du temps pour un juge d’instruction: la précipitation et l’indolence” (43). However, Chapelle tempers this advice with the warning, “Le temps joue contre vous, Violet. Voilà deux mois que le cadavre de votre assassiné est refroidi” (43). Also spurred on by the media’s positive coverage of the investigation, Violet quickly identifies the prime suspect in the case, the victim’s lifelong rival, Palavy, as the murderer. The newspapers and Violet’s superiors praise him for his handling of the investigation. However, after the investigation concludes, Cussol, the mayor of the town, comes to Violet and confesses that he is the real killer. Violet is thrown into a conundrum, faced with the choice between damaging his own reputation and condemning an innocent man to prison. He drives out to Cussol’s house, in order to tell the mayor to keep quiet. In the middle of the heated conversation, the mayor dies of a heart attack –
for which Violet blames himself. The novel ends with Violet castigating himself for having made the wrong decision.

Again, as in so many French legal narratives, none of the action in the novel occurs in the courtroom. The plot proceeds by way of conversations in Violet’s chambers, as well as conversations in cafés and homes. However, unlike other portraits of the juge d’instruction, Violet is neither hero nor mean-spirited villain. Rather, this is an all-too-human portrait of a fledgling judge, fresh out of university and relatively naïve. The questions “Whodunit?” and “Who is guilty?” are present, but merely incidental to Patier’s larger project of tracking the young judge’s thought process during the investigation, and the resulting judicial error. Violet’s best and only friend, lycée philosophy teacher Jean Ferrasse, plays devil’s advocate, criticizing Violet’s involvement in a faulty judicial system. Initially, Ferrasse invokes a famous fictional French detective in his praise of Violet: “Tu es fait pour les enquêtes à la Maigret” (30). However, later, Ferrasse compares Violet’s conviction of Palavy to the French involvement in Nazi activities during World War II. Violet states: “Pour moi, les problèmes de conscience ne sont pas un luxe. Je ne fais pas d’impasse à leur sujet, j’essaie de les résoudre. Ensuite, je prends des décisions. Il faut bien qu’il y ait des volontaires pour les prendre, les décisions” (64). Ferrasse responds: “Ça, c’est vrai, il faut des volontaires. A la guerre, on trouve même quelquefois des volontaires pour torturer. Et tu sais ce qu’ils disent, les volontaires? Ils disent comme toi : heureusement qu’on se dévoue, nous les volontaires, pour faire le sale travail pendant que les autres font de la morale. Il y a les hommes courageux, et puis à côté, il y a les moralistes qui dissertent dans les fauteuils” (64).

Ferrasse also picks up on the changeable nature of truth, as he comments to
Violet: “La vérité, elle dépend de l’époque et du lieu, du temps qu’il fait, d’un estomac vide ou d’une bonne digestion” (65). However, there is no further consciousness of the construction of truth by the judicial process or narratives put forward by avocats, who hardly make an appearance in this novel. Truth is represented as a binary choice (guilty/not guilty) that is Violet’s choice alone, the choice of a solitary individual. Unfortunately, Violet makes the wrong choice, resulting in yet another error by a juge d’instruction, and another instance where the legal system fails to bring about justice.

**The Juge d’instruction on Television**

Unlike the rarity of the avocat as a protagonist of French television series, the juge d’instruction appears frequently as a main character. For example, the six ninety-minute episodes of the series Madame le juge portray juge d’instruction Élizabeth Massot, a middle-aged widow who has re-entered the workforce after the death of her husband. Set in Aix-en-Provence, each episode follows the investigation of a different case. While she sometimes attends the crime scene to view evidence first hand, most of the show’s action consists of her careful consideration of the police reports and shrewd interviewing of witnesses. It is most often the juge’s attention to detail that solves the case – by a careful scrutiny of the facts, she arrives at an official version of events, which either she or the suspect narrates at the end of the episode. In this way, the show depicts the triumph of logic and reason.

Massot’s understanding of her role as juge d’instruction seems clear and unproblematic. For example, when a witness states that he has no confidence in the

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judicial system – “Je ne crois pas à la justice que vous présentez” – she answers, “Je suis fonctionnaire. Je fais mon travail, et mon travail consiste à découvrir la vérité” (episode 1). Yet, despite juge Massot’s skill, “truth” does not always lead to justice. In the first episode, a young woman is sent to prison for killing her fiancé, despite the fact that her Mafia ex-boyfriend actually committed the crime. However, the young woman’s sense of guilt leads her to declare: “Je suis la seule coupable.” Juge Massot appears sympathetic to the young woman, but is unable to stop her from going to prison while her ex-boyfriend remains free. In the second episode, a man kills his wife rather than admit that he is about to leave her for his lover. After juge Massot inculpates him, the man hangs himself in his cell, either unable to face his punishment, or judging himself unworthy to live. In the third case, a cheating wife frames a man for robbery. When he escapes from prison and barricades himself in his home, juge Massot intervenes and enters, attempting to talk him into coming out. It appears that she has the situation under control, and she finds out that the man is a childhood acquaintance of hers. However, in a fatal slip, the man wanders too near a window and is shot by the police. None of the results in these cases seem suitable for the crimes committed.

The fourth episode has a neater and more “just” ending, where a man is caught after setting fire to his brother’s property, after the brother refused to sell the land to a large commercial development company. Episode five takes an unexplained turn into postmodernism, which is strange, given that the rest of the series is not postmodern. Juge Massot investigates a young man’s double murder of his parents, but the sequences of the episode are fragmented and illogical. The viewer is left without explanation or closure, wondering whether the events are part of a dream sequence, or are to be taken as a
commentary on the nature of justice. The same postmodern style does not carry into the sixth episode, where the juge witnesses a man breaking into the apartment across the road from her home. The police discover that the intruder has killed a young woman who lived in the apartment. Rather than investigating the case, juge Massot is thrown into the position of witness. She is initially embarrassed at her own inability to recall the exact details of the intruder’s appearance, especially given the extremely detailed reconstruction given by the only other eyewitness in the case. However, Juge Massot turns out to be as judicious a witness as she is a judge. Her vague recollection leads to a more just result than the very detailed, but erroneous portrait of the suspect given by the only other eyewitness.

Each of the six episodes becomes increasingly centred on the juge’s personal life, until by the final episode, the roles are reversed and she is taken out of her usual role. In the first two episodes, the juge is only professionally involved in the case, as the investigator. In the third episode, juge Massot becomes personally involved in the events by intervening in a crime in progress, rather than simply investigating a crime after it has occurred. She becomes further involved when the suspect recalls that the juge lived near him during their childhood. In the fourth episode, the juge’s personal involvement deepens, as her investigation involves her friend Paul. At the beginning of the episode, the juge visits the property that later becomes the site of the arson. In the fifth episode, she becomes a mother figure in the presumably imagined scenes with the young criminal Jean-Michel, to the point where she takes him home with her. By the last episode, her personal involvement is so complete that she becomes a witness, rather than a juge, blurring the line between the legal system and its object of analysis.
The show also portrays the juge’s private life in some detail (which the box copy describes as “une vie quotidienne de Madame Tout le Monde”). She leads a comfortable, upper middle-class lifestyle. While other depictions of juges d’instruction include their family and personal lives to a limited extent, including limited scenes where the juges act as fathers, juge Massot’s motherhood (despite the fact that her son is a grown man) is one of the show’s central interests. One of her primary concerns is that her grown son is more interested in pursuing a career in music rather than enrolling at university. Despite this concern, by the end of the series, Guillaume has found a stable position as a composer at a local theatre. This seems to indicate that the descriptor “Madame Tout le Monde” equates to her middle-class status, especially in comparison with the lower-class people she investigates.

In contrast to the active, young juges d’instruction of Boisset’s Le juge Fayard, dit « le Shérif » and Lefebvre’s Le juge, juge Massot is a more physically passive character, relying on logical deduction to solve her cases. Although she is shown investigating crime scenes and interviewing witnesses in their homes and workplaces, many of the scenes take place in the juge’s office, a modest space in the courthouse. The comparative passivity with which she performs her professional duties may relate to the French representation of her gender. While the majority of fictional juges d’instruction are male, in reality, females have an equal and growing presence in the profession. Leubsdorf notes: “Things being as they are, it is another sign of low status that about half the magistrates--and two-thirds of those now entering the magistrates’ school--are women” (101). Yet, despite juge Massot’s physical passivity, her intelligence brings

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38 The sixty ninety-minute episodes of Les Cordiers, juge et flic that ran between 1992 to 2005 return to the masculine portrait of the juge d’instruction. Thirty-something juge Bruno Cordier spends little time
her close to Fitzpatrick’s concept of the “fully conscious individual of Europe who not only knows but also acts on and makes the world” (34). More than any other figure discussed in this chapter, juge Massot has the ability to uncover the truth, despite what the legal system does with that truth once she has completed her investigation.

**Far from the “Spectacle of the Scaffold”**

The portrayal of avocats and juges d’instruction in French culture reinforces Foucault’s claim of the increasingly normative influence of law. French popular legal culture underlines time and again the move away from the “spectacle of the scaffold.” Foucault writes: “In France, as in most European countries, with the notable exception of England, the entire criminal procedure, right up to the sentence, remained secret: that is to say, opaque, not only to the public but also to the accused himself….The secret and written form of the procedure reflects the principle that in criminal matters the establishment of truth was the absolute right and the exclusive power of the sovereign and his judges” (Discipline and Punish, 35). Today, the emphasis on investigation over advocacy, with the preference of the juge d’instruction over the avocat character,

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interviewing witnesses in his office, but rather is shown investigating crime scenes alongside his father, commissaire Pierre Cordier. Like juge Massot, the Cordiers are not always capable of stopping crime; nor are they always able to bring about just results. Further, like juge Massot, the Cordiers also become personally involved in the crimes they investigate.

The role of the juge d’instruction throughout these episodes is rather close to that of the detective, despite Bruno’s comments to Anne-Marie in the first episode: “Dites-moi tout. Un juge c’est un peu comme un confesseur, sauf qu’il ne distribue pas les mêmes pénitences.” However, Bruno seldom acts as a confessor. His role is only marginally different from that of his father, except that the commissaire carries a gun and commands the police. The two sometimes clash, given Pierre’s intuitive style of investigation and Bruno’s analytical method. Pierre points to his nose and identifies his main method of investigation as “le flair,” while Bruno says: “Moi, c’est analyse et synthèse.” Yet, beyond their use of contrasting approaches, there are few differences between actual investigative duties of the commissaire and the juge, although this certainly differs from the reality of these professions.

Despite the fact that the Cordiers’ efforts are not always successful (e.g., they are unable to prevent two murders in the first episode; nor can they recover the stolen money in the second episode), in general, the show presents a positive picture of both Bruno and Pierre Cordier as competent detectives. Through them, the legal system is shown as an efficient means for achieving justice.

39 See my discussion in Chapter 1.
exemplifies the shift away from this exclusive power. However, beyond the emphasis on
investigation, French fictional narratives display the legal system’s general inability to do
justice. With the exception of *Avocats et associés*, contemporary fictional portraits of
*avocats* do not portray them achieving just results for their clients or otherwise working
actively to promote justice. In fact, *avocats* are often shown crossing the line from
*avocat* to accused, and sometimes even criminal.

Likewise, fictional *juges d’instruction* are unable to bring cases to justice through
traditional means. They resort to vigilante tactics (in the films *Le juge Fayard, dit « le
shérif »* and *Le juge*), or commit grave judicial errors (e.g., in Xavier Patier’s *Le Juge*).
The sole portraits of an effective judiciary studied in this chapter exist on television, in
the form of shows like *Madame le juge* and *Les Cordiers, juge et flic*. As with *avocat*
narratives, fictional *juges d’instruction* often cross the line from *juge* to witness, or even
victim. Overall, the competence of the legal system is portrayed as highly questionable.

This trend is perhaps unsurprising, given France’s history of revolution and
general propensity for public protest. Writers’ censure of the legal system occurred even
before the Revolution. Voltaire intervened in the 1762 case of Huguenot merchant Jean
Calas, who was tortured and executed on the wheel, for the murder of one of his own
sons. Voltaire was instrumental in overturning the verdict three years after the man’s
death (Ryf 42). Later, Zola’s intervention in the 1894 Dreyfus case resulted in the
reopening of the case in 1899, and Dreyfus’ subsequent exoneration (43).

Exceptional cases such as these have paved the way for more frequent criticisms of the
legal system, now common in popular French fictional narratives. Outside of the legal
system, Foucault’s “judges of normality” function, whether in the form of the academic,
the novelist, the filmmaker, the journalist, or the audience – all are invited to take the place of the judge. “Justice” is no longer an exclusive power of the sovereign or the legal system, but is often a matter that individual citizens take into their own hands, vigilante-style.
Chapter 6

“Wicked Christians” and Incompetent Advocates:

The Cynical Anthropomorphizations of German Law

Of the countries studied here, Germany currently produces the fewest fictional legal narratives. Quite unlike the lawyer and judge characters in Anglo-American culture, and the French juge d’instruction figure, the German fictional legal narratives that do exist rarely articulate concepts of law through the equivalent figures: the “Rechtsanwalt” or “Anwalt” (“lawyer”),¹ the Richter (“judge”) and the Ermittlungsrichter (“examining magistrate”). These narratives display a profound questioning of the legal system, at best, and portray the legal system as a potential vehicle for grave injustices, at worst. At their most extreme, the cynicism in these texts exceeds even the American skepticism about the law, and the German texts also lack the humour inherent in many Anglo-American representations. Further, German texts, such as Peter Weiss’s The Investigation (Die Ermittlung) (1965), Bernhard Schlink’s The Reader (Der Vorleser) (1995), and Heinrich Böll’s The Lost Honor of Katharina Blum (Der verlorene Ehre der Katherina Blum) (1974), use very different strategies of anthropomorphization than those used by the texts of the other countries studied here.²

There has been a negative attitude toward lawyers since their emergence in Central Europe in the fourteenth century, as reflected in the saying “lawyers are wicked

¹ Other terms referring to the German legal profession also include “Rechtsberater” (“legal counsel”), “Jurist” (“jurist”) and “Volljurist” (“full-fledged jurist”). I will discuss the particularities of the latter term’s usage shortly.

² These more “high art” texts present a strong contrast to the Americanized image of the courtroom that dominates German daytime television in the ‘scripted reality’ television programs discussed in note 7. Rather than focusing on the television programs, I have chosen to focus on these texts partially because of the contrast they present to the texts studied in the previous chapters, and also because of the theoretical issues that emerge. It is also possible that this contrast exists because the narratives examined in this chapter are not popular culture texts.
Christians”³ (qtd. at Stolleis 1).⁴ German sovereigns exhibited profound distrust toward advocates, as is clear in the following edict issued by Prussian King Friedrich Wilhelm I in 1739: “Edict that those advocates, procurators and draftsmen who dare make people rebellious by having soldiers hand over to His Royal Majesty petitions on the most negligible matters or any other documents on justice, such as those asking for pardon, shall be hanged with a dog hanged at their side, granting neither mercy nor pardon” (qtd. in Blankenburg and Schulz 126).⁵ In contemporary times, an ambivalent attitude prevails, and it is said that the popular perception of lawyers is now marked by “respect and disdain, trust and distaste” (Stolleis 1).

In the early twentieth century, German “trivial-popular Prozeßliteratur” abounded, and popular drama presented “a veritable flood of mistrials and judicial injustice on the stage,” according to F.K. Jakobsh (109). However, Jakobsch also notes, “most of these plays have been forgotten due to their artless pathos” (109). The courtroom was often used in the plays of Bertolt Brecht,⁶ and appeared prominently in radio plays between 1930 and 1960 (111). Since then, the courtroom has been sporadically used as a setting, and fictional legal narratives are a relatively rare occurrence in contemporary German culture.⁷

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³ “Juristen böse Christen.”
⁴ Examples of the negative attitude toward the legal system in Germanic literature include Heinrich von Kleist’s novella Michael Kohlhaas (1811), Franz Kafka’s The Trial (Der Prozeß) (1925), and Friedrich Dürrenmatt’s The Marriage of Mr. Mississipi (Der Ehe des Herrn Mississippi) (1957).
⁵ For a brief period (1780 to 1783) the profession of the advocate was even abolished by a Prussian Royal Order.
⁶ Eight of Brecht’s plays contain trial scenes (Jakobsh 109).
⁷ However, there have been numerous German courtroom shows that have had a large impact on television programming. These shows appear to be derivatives of American reality-based TV shows like The People’s Court (1981-present) and Judge Judy (1996-present), in which a single judge arbitrates an “actual case” between self-represented plaintiffs. However, the German versions fall into a slightly different category, called “scripted reality” or “Pseudo-doku,” in which there is less pretension to reality, given the presence of a script. The first courtroom show was called Streit um Drei (which translates to “Trouble at Three O’Clock,” a title that referred to its afternoon broadcast time) (1999-2003). Similar shows followed,
Given the relative lack of creative production in this area, it is not surprising that, according to novelist and judge Bernhard Schlink, the law and literature movement “has yet to arrive in Germany.”

There have been a handful of texts published on the subject of law and literature, but as in France, these texts are not exclusively devoted to German literature. I would argue that there are several factors that have affected the lack of production of fictional legal narratives in Germany, and that also shape the narratives that do exist. First, German legal theorists tend to conceive of the law in much more abstract terms than do those in other countries. Second, there appears to be a different emphasis on the roles of German judges and lawyers than in certain other countries: German judges are imbued with less decision-making authority than in other countries, and the practice of law is less geared toward advocacy. However, the third and perhaps the most influential factor affecting German fictional legal narratives is the legacy of the

and since 2000, German daytime television programming has been dominated by the success of the courtroom shows.

Unfortunately, these shows seem to have replaced more intellectually edifying documentary programs that previously filled the daytime slots. Recent shows include: Das Jugendgericht (featuring Judge Ruth Herz from 2001-2005; Judge Kirsten Erl from 2005-2007), Das Familiengericht (2002-2007), Das Strafgericht (2002-present), Richterin Barbara Salesch (1999-present) and Zwei bei Kallwass (2001-present). Another “scripted reality” series, this time featuring a lawyer, is Lenßen und Partner (2003-present), which features real-life advocate Ingo Lenßen, who investigates crimes in lower-class Cologne. All the shows feature very emotional, reality-based but fictional courtroom scenarios. The cases and crimes have become increasingly explicit over the years. Rape, child abuse, pornography and murder cases are often dramatized simultaneously on two main channels between 2:00 p.m. and 4:00 p.m. in the afternoon.

“Scripted reality” shows are clearly an important aspect of popular legal culture in Germany. Their similarity to American formats makes them an anomaly among other German fictional legal narratives, given their general view of the legal system as an institution that is capable of resolving conflicts in an effective manner. Unfortunately, a more detailed analysis of these shows is beyond the scope of this dissertation, as such an analysis would necessarily include a discussion of reality-based TV shows in other countries.

Schlink made this comment at a reading at the University of Toronto’s Faculty of Law in 2006.

Such texts include Heinz Müller-Dietz’s Grenzüberschreitungen: Beiträge zur Beziehung zwischen Literatur und Recht; Peter Schneider’s ein einzig Volck von Brüdern: Recht und Staat in Literatur.

At least, these factors seem to affect production of fictional legal narratives prior to the last decade. It is quite possible that the emergence of these “scripted reality” courtroom shows will influence other types of German fictional legal narratives.
perversion of justice that occurred under the Nazi regime. I will return to this in detail after addressing the first two factors.

Germans are less likely to view law through the filter of the individual figure, conceptualizing law instead through the highly abstract concept of the “Legal Order” ("Rechtsordnung"). As James Herget explains: “This concept of unity in German jurisprudence is illustrated by the frequent use of the term “Legal Order” (117). The Legal Order is the sum total of all legal relationships subsisting between entities recognized by the law. Where Americans are likely to visualize the “legal system” either as a procedural apparatus or as an organization of persons (courts, legislatures, lawyers, etc.) who enact, apply, administer, and otherwise deal with the rules of law, the German would ordinarily visualize an unpeopled abstract entity (the Legal Order) that has comprehensively determined all legal rights, duties, and powers within a society” (117).

It is thus not surprising that lawyers and judges do not feature frequently as main characters in German fictional legal narratives. The concept of the “unpeopled abstract entity” manifests itself in certain fictional works, especially in Weiss’s Die Ermittlung.11

Of the other countries studied here, Germany has a legal system most similar to that of France. Both are civil law systems, based on codified law, with an inquisitorial structure. In Germany, the judge also takes precedence in the courtroom, and the role of the lawyer is given less prominence. However, as in the French system,12 German judges

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11 However, the law student/lawyer appears as protagonist in Schlink’s Der Vorleser. Other works do bear similarities to Anglo-American legal genres, for example, Ein Fall für zwei (1981-present), a television show in which a lawyer and a police detective work together to solve crimes. Further, while Thomas Hettec’s novel, Der Fall Arboast, differs in some aspects from American legal thrillers, the influence of the American genre is evident not only in its form and content, but in its many references to the American legal system.
12 For an extended discussion of the comparison between judicial decision-making capacities in France and Germany, see Vivian Grosswald Curran, “Formalism and Anti-Formalism in French and German Judicial Methodology.”
have less power than Anglo-American judges, because German courts have no inherent authority to make law, and are theoretically only charged with the interpretation of legislation:

While it is true that court opinions are published, and courts tend to follow the reasoning set out in prior cases, the opinions themselves are never looked on as the source of the law but as expositions of how the law (stemming from the legislature) should be applied and interpreted with respect to specific fact situations. The term *Rechtsfindung* (literally, law-finding) is often used to describe the process in which the courts doctrinally supplement the statutory authority in order to reach conclusions in particular factual situations. They “find” the law implicit in the statute because they lack the authority to make law. (Herget 115)

However, unlike the French, Germans do not focus on the equivalent figure to the *juge d’instruction*, the *Ermittlungsrichter* (investigating judge),\(^\text{13}\) perhaps because the latter has a more limited role than the former.

Further, the German legal profession does not correspond exactly to its Anglo-American counterparts. In a study on German advocates, Erhard Blankenburg and Ulrike Schultz state that German lawyers generally have been trained for public service, rather than advocacy. The term “Volljuristen” (“full-fledged jurists”) applies to all those who pass the two state examinations, and fewer than two thirds of those are employed as “Anwälte” (“advocates”) (124). Further, the theoretical training given at law schools is oriented toward judges, not advocates. Blankenburg and Schultz write: “The emphasis

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\(^{13}\) Denis Salas explains the limitations on the role of the *Ermittlungsrichter*:

In Germany and Italy, a desire for both greater efficiency and better protection of basic freedoms has led to a more rational division of tasks: whereas the public prosecutor is solely responsible for criminal investigations, German ‘intermediary judges’ (*Ermittlungsrichter*) and Italian judges of preliminary inquiry (*Giudici per le indagini preliminari*) exercise only judicial powers in the early stages of a criminal case. This division of roles removes the risks inherent in an undue concentration of powers in the hands of a single individual, as is the case with the French *juge d’instruction* (examining magistrate). The risk of an undue concentration of powers exists whenever the examining magistrate is also simultaneously the investigator. In France this led to the Commission justice pénale et droits de l’homme, in its 1990 report, to say that the public prosecutor should carry out investigations, leaving judges to exercise judicial powers alone. (498)
corresponds to the numerical dominance of judges and civil servants in the legal profession, where advocates traditionally have been a minority…. Interest in lawyers in Germany traditionally had concentrated on their roles as judges and civil servants and on their orientation toward authority rather than advocacy…. Lawyers were expected to serve ‘the state’ rather than represent citizens” (124-5). However, the number of advocates in Germany has increased by more than seven times in the last forty-five years.¹⁴ Yet, despite the growth of the profession, advocates still do not have as prominent a place in society as lawyers in the Anglo-American tradition.

The Perversion of Law Under the Nazi Regime

Notwithstanding their impact, I would argue that neither the tendency of the Germans toward the abstract concept of the “Legal Order,” nor the roles of the judge and the lawyer in the courtroom have affected the shape of German fictional legal narratives as much as has the effect of the perversion of law that occurred under the Nazi regime. This erosion of faith in the law is hinted at in a few salient fragments in W.G. Sebald’s Austerlitz.¹⁵ Prior to the Nazi occupation of Czechoslovakia, one of the characters exhibits a kind of denial about the failure of the legal system to effect justice:

“Maximilian stayed in Prague throughout the winter, whether because of his work for the Party, which was now a matter of particular urgency, or because he refused, for as long as was humanly possible, to give up his belief that the law would protect a man” (171).¹⁶ At

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¹⁴ From 18,347 (in 1960) to 132,569 (in 2005). The growth has been attributed to political changes and overproduction by the educational system, and recent changes in the German legal profession indicate that it is converging with other Western legal cultures (Blankenburg and Schulz 125).

¹⁵ Austerlitz is not a legal narrative, and my aim here is not to embark on any sort of analysis of the novel, but simply to examine two passages that illustrate a few basic points.

¹⁶ ...ist Maximilian den ganzen Winter hindurch noch in Prag geblieben, sei es wegen der gerade jetzt besonders dringlichen Parteiarbeit, sei es, weil er doch, so lange es irgend ging, den Glauben, daß das Recht einen beschütze, nicht aufgeben wollte (245-6).
another point, the protagonist considers the history of “trials” and the absence of lawyers in the Nazi regime:

…only when I learned of the true extent of the perversion of the law under the Germans, the acts of violence they committed daily in the basement of the Petschek Palace, in the Pankrác Prison, and at the killing grounds out in Kobylisy. After ninety seconds in which to defend yourself to a judge you could be condemned to death for a trifle, some offense barely worth mentioning, the merest contravention of the regulations in force, and then you would be hanged immediately in the execution room next to the law court, where there was an iron rail running along the ceiling down which the lifeless bodies were pushed a little further as required. The bill for these cursory proceedings was sent to the relations of the hanged or guillotined victim, with the information that it could be settled in monthly installments. (175)

Sebald’s description of the “trials” speaks eloquently to the absolute disregard for basic human rights that occurred during the Holocaust. Despite their brevity, Sebald’s passages demonstrate the effect of the manipulation of law during this time, even in a narrative that has nothing else to do with the legal issues of the Holocaust.

This manipulation of the law was achieved through Nazi legal principles that played with the concepts of individuality and community:

National Socialist constitutional law, or Volksgemeinschaft, was characterised negatively by rejection of the individualistic, normative concept of the people (the people [Volk] as the sum of nationals of the State), as presented in the Weimar Republic. In positive terms, the term Volksgemeinschaft promised a collective unity defined in value terms by, for instance, features of Blut und Boden (blood and soil), community experiences, and thus also inner ideas and feelings of belonging together….The concept of the Volksgemeinschaft was accordingly central to National Socialist law. It was used to assert the legitimacy of the ruling
order, discredit fundamental rights, and collectivise and delegalise the position of the individual. (Lepsius 24)

While the individual identities of the German people were merged into the collective concept of the *Volk*, the individual identities of the Jews were destroyed in a much more odious manner through “Nazi corruption of the legal form, such as Nazi citizenship laws, the recourse to emergency powers, the removal of non-Aryans from the civil service, the process of exclusion of Jews, eugenics, and criminal law ‘reforms’” (Moran, “In the Glass Darkly” 459).

In addition to the key concept of *Volksgemeinschaft*, the Nazis instituted the *Führerprinzip*, which focused on Hitler as the single individual of any importance: “in the Führer the essential principles of the Volk come into manifestation; it is he who lets them become the guiding thread of all the work of the Volk….He embodies the overall will of the *Volk* as an objective quantity” (Ernst Rudolph Huber, qtd. in Lepsius 25). A third element that marked Nazi law was a commitment to “permanent substantive openness” in which there was “neither a canonization of the National Socialist ideology nor a fixation of particular binding forms or sources of law apart from the Führer’s orders” (27). The words of Hitler were considered the only stable source of “law,” and his orders could trump any judge’s decision or legislation.18

Many Holocaust perpetrators later used the concept of the *Führerprinzip* to deny individual responsibility. Hannah Arendt addresses this in the context of the Eichmann trial, in *Eichmann in Jerusalem* (1963):

What he had done was a crime only in retrospect, and he had always been a law-abiding citizen, because Hitler’s orders, which he had certainly

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18 The Nazis had no written constitution of their own. The Weimar Constitution was still formally in place throughout the Nazi regime, but many of the civil rights it guaranteed were suspended, shortly after Hitler came into power, by the ‘Reichstag Fire Decree’ (”Reichstagsbrandverordnung”) of February 27, 1933.
executed to the best of his ability, had possessed “the force of law” in the Third Reich. (The defense could have quoted in support of Eichmann’s thesis the testimony of one of the best-known experts on constitutional law in the Third Reich, Theodor Maunz, currently Minister of Education and Culture in Bavaria, who stated in 1943 [in *Gestalt und Recht der Polizei*]: “The command of the Führer … is the absolute center of the present legal order” (24).

The argument that the “force of law” justified individual actions is an argument that surfaces in fictional narratives such as Weiss’s *Die Ermittlung* and Schlink’s *Der Vorleser*, which I will discuss shortly.

That there was a perversion of law is the current prevailing view. David Fraser writes: “One popular and perhaps intellectually dominant jurisprudential view in the English-speaking world, after 1945, is that Nazi law was and is not law. According to this position, Nazi ideology so perverted our normal and accepted notions of right and wrong, of law and justice, that Nazi law was law in form only” (87). However, in Fraser’s opinion, this view overlooks the perspective of contemporaneous Anglo-American scholars, who considered law under the Nazi regime to be “more or less normal,” at least until 1940 (111). German law held interest the interest of international scholars because of its developments, which were often considered innovative. These were sometimes viewed as the natural continuation of conventional German legal practices, and did not strike other scholars as going beyond normative standards (111).

In the decade following WWII, there was a revival of natural law in Germany after the impact of the Nuremberg war trials. German legal scholars generally believed

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19 For a discussion of the parallel corrosion of the legal system in France, see Richard Weisberg, *Vichy Law and the Holocaust in France*.

20 Further, Fraser points out the “demons” in Anglo-American legal histories, and warns against the tendency to overlook these. He uses the example of the history of compulsory sterilization in the United States, which has been compared to the policy in Nazi Germany. He notes that “[e]ugenic discourse and legislative practice around the issue of compulsory sterilization of ‘asocials’ and of the ‘mentally defective’ were clearly on the agenda of Western industrialized countries in the early part of this century” (109).
that “legal positivism, dominant as a legal philosophy at the time of the Nazi takeover, was responsible for the ease with which the courts and the law were corrupted” (Wacks 26). In the views of such legal theorists as German Gustav Radbruch and American Lon Fuller, “law” under the Nazi regime ceased to be considered law because it contravened the “basic requirements of justice” (Grosswald Curran 216). According to these scholars, in the ideal situation, rather than attempting to interpret or apply immoral enactments, judges should declare them “not to constitute law” (216).

H.L.A. Hart’s positivist view contrasts with the natural law position, and “Hart insisted that laws are laws, no matter how evil, when they are generated by the authorized law-making authorities, but he insisted with equal vigor that a duty of conscience requires violating laws that do not deserve to be obeyed, and that to say something is a law is not tantamount to saying that it should be obeyed” (Grosswald Curran 216-17). Thus, in Hart’s view, Nazi law was still law. In “Positivism and the Separation of Law and Morals” (1958), Hart disagrees with the approach taken by German courts in their prosecution of local war criminals, spies and informers. He writes: “The special importance in these cases is that the persons accused of these crimes claimed that what they had done was not illegal under the laws of the regime in force at the time these actions were performed. This plea was met with the reply that the laws upon which they relied were invalid as contravening the fundamental principles of morality” (618). To illustrate his disagreement with this approach, Hart uses the example of the “grudge informer,” which is drawn from a German context:

In 1944 a woman, wishing to be rid of her husband, denounced him to the authorities for insulting remarks he had made about Hitler while home on leave from the German army. The wife was under no legal duty to report his acts, though what he had said was apparently in violation of statutes making it illegal to
make statements detrimental to the government of the Third Reich or to impair by any means the military defense of the German people. The husband was arrested and sentenced to death, apparently pursuant to these statutes, though he was not executed but was sent to the front. In 1949 the wife was prosecuted in a West German court for an offense which we would describe as illegally depriving a person of his freedom (rechtswidrige Freiheitsberaubung). The wife pleaded that her husband’s imprisonment was pursuant to the Nazi statutes and hence that she had committed no crime. The court of appeal to which the case ultimately came held that the wife was guilty of procuring the deprivation of her husband’s liberty by denouncing him to the German courts, even though he had been sentenced to a court for having violated a statute, since, to quote the words of the court, the statute “was contrary to the sound conscience and sense of justice of all decent human beings.” (619)

However, rather than declaring such laws to be immoral and therefore invalid, Hart considers two other options: first, to “let the woman go unpunished”; second, “the introduction of a frankly retrospective law and with a full consciousness of what was sacrificed in securing her punishment in this way” (619). Hart argues strenuously for the latter, in the belief that, despite the drawbacks of retrospective law, the best option is to admit to the problematic moral situation that the case presents and to deal with it in an upfront manner. He admonishes: “Surely if we have learned anything from the history of morals it is that the thing to do with a moral quandary is not to hide it” (620).

Notwithstanding the debate amongst legal theorists in the wake of the Holocaust, and to some extent the American representation of the Nuremberg Trials (e.g., by the movie Judgment at Nuremberg), certain scholars maintain that there was a period of silence after the Holocaust, during which the atrocities committed by the Nazis remained unexamined in German literature. Others suggest that the “amnesia” about the Holocaust is widely exaggerated. Scott Windham outlines the debate in his criticism of Ernestine Schlant’s book, The Language of Silence: West German Literature and the Holocaust (1999): “Schlant writes that West German writers in the first four decades after World

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21 See my discussion in note 31.
War II approached the Holocaust with a type of ‘literary silence,’ either failing to address the Holocaust or addressing it indirectly or incompletely. For Schlant, ‘the West German literature of four decades has been a literature of absence and silence contoured by language.’ Schlant’s claim is farfetched: as we have seen, the Holocaust shared the literary and critical stage with other concerns, but the efforts of postwar intellectuals were immediate, serious and lasting” (xxiv).

**Individual Responsibility in the Context of Nazi War Crimes Trials**

Peter Weiss’s play, *The Investigation (Die Ermittlung)*, is one such text. The play is composed entirely of dialogue excerpted from transcripts of the Auschwitz trial, and highlights issues of individuality and responsibility surrounding the prosecution of Nazi war criminals. The play also touches on the perversion of law during the Nazi regime, both in terms of the justification for individual actions, and in terms of its descriptions of “trials” that took place in the concentration camps. There are no stage directions, and in the explanatory “Note” with which he prefaces the play, Weiss instructs: “In the presentation of this play, no attempt should be made to reconstruct the courtroom before which the proceedings of the camp took place. Any such reconstruction would, in the opinion of the author, be as impossible as trying to present the camp itself on stage” (i). On its opening, the play sparked much discussion amongst the German public (Windham 44), but was originally greeted with derision by many critics, many of whom viewed it, as Robert Cohen notes, as “a distortion and exploitation of the Holocaust for ideological reasons; it was artless, lifeless and mechanical…” (44). Nonetheless, it appears to have gained critical standing in subsequent years. Cohen

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22 See also Rolf Schneider’s play, *Prozeß in Nürnberg* (1967).
23 In many instances, Weiss took excerpts from newspaper reports by Bernd Naumann in the *Frankfurter Allgemeine.*
situates it in the tradition of Documentary Theatre (DT): “The DT uses facts, documents and authentic figures as raw material in the same way other types of drama use imagined events and characters. The concept of the preexisting material as the matter of artistic creation was propagated by artists and theoreticians of the left in the Soviet Union and Germany from the 1920s. It signaled a rejection of the bourgeois notion of the creative process as intuitive, even mystical, which had evolved by the turn of the century” (51).

Weiss’s play pays homage to Dante’s Divine Comedy, and each of the eleven Cantos of The Investigation progresses deeper into the hellish circles of the concentration camp. The play begins with witness testimony describing the railway station outside the camp (“The Song of the Platform”), and moves on to the conditions inside the camp itself (“The Song of the Camp”), through various “circles of hell” (e.g., “The Song of the Black Wall” and “The Song of the Bunker Block”) until finally reaching the depths of Nazi atrocities (“The Song of the Fire Ovens”). Yet, while the Divine Comedy features the poet as a first-person narrator, Weiss’s play attempts to resist focalization through a single character, or through an ensemble of characters, and instead uses a depersonalized style influenced by Bertolt Brecht. Weiss explains the reasons for this choice in his “Note”: “Hundreds of witnesses appeared before the court. The confrontations of witnesses and the accused, as well as the addresses to the court by the prosecution and the replies by the counsel for the defense, were overcharged with emotion. Only a condensation of the evidence can remain on the stage. This

24 “Gesang von der Rampe.”
25 “Gesang vom Lager.”
26 “Gesang von der Schwarzen Wand.”
27 “Gesang vom Bunkerblock.”
28 “Gesang von den Feueröfen.”
29 “Anmerkung.”
condensation should contain nothing but facts. Personal experience and confrontations must be steeped in anonymity. Insasmuch as the witnesses in the play lose their names, they become mere speaking tubes. The nine witnesses sum up what hundreds expressed” (i).  

Further, the judge, the prosecutor, and the defense attorney do not have individual names, but are simply referred to by their titles. However, they do not need proper names as individuals. Each title is a name and expresses the character’s function, which is the character’s professional identity. Their role or persona (in the sense of Greek tragedy, in which the persona is the mask actors put before their faces) in the drama is limited to that of “Ankläger,” “Richter,” etc. As is usual in the inquisitorial system, the judge does appear to play a more active role in questioning the witnesses. However, neither he nor the lawyers have any individual qualities that would encourage the development of their characters beyond the role they play in the investigation. Further, there is nothing outside of the testimony to frame the witnesses’ narratives. No opening or closing statements exist to influence the interpretation of the testimony. Nor is judgment – a key opportunity for the development of the character of the judge – rendered at the end of the play. Here, the anonymity of the judge and the lawyers is very much in keeping with

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31 This differs greatly from the American approach to similar material, for example, in the movie Judgment at Nuremberg (1961), in which the judges and lawyers have very distinct personalities, and their individual characters are developed in more depth. Rather than relying primarily on witness testimony, the movie is focalized through the character of the American Judge Haywood, and the lawyers’ arguments play an integral role in the emerging narratives. Judgment at Nuremberg presents the trials to the public as a triumph of good over evil. However, critics such as Jeffrey Robertson have criticized the Nuremberg Trials as victor’s justice. Among other points Robertson raises, the Allies hypocritically condemned Germans for things of which the Allies themselves were guilty. Further, the Germans were judged by a panel of judges
the abstract concept of the “Legal Order,” rather than with the focus on individualization that occurs in Anglo-American fictional legal narratives.

Despite Weiss’s explanatory note, early critics disapproved of the play’s lack of individuation: “There are no fully rounded characters in *The Investigation*. The ‘judge,’ the ‘prosecuting attorney,’ and the ‘counsel for the defense’ are composites, as are the nine ‘witnesses’ who represent the victims. They remain, as Weiss’s critics point out, anonymous figures without discernible individuality” (Cohen 49). Yet, Weiss’s chosen style illustrates quite powerfully the effect of the repression of individuality under the Nazi regime: “the state’s total domination of all areas of life is the necessary consequence of the elimination of the personal existence of the individual and his degradation into a mere tool” (Gerhard Leibholz, qtd. in Gessner 177). This is reiterated in the play’s dialogue, in the testimony of the “5th Witness” (a concentration camp survivor): “every last remnant / of our usual life / vanished / Family / home / occupation / and possessions / were ideas / that were wiped out / when the number / was stamped into your arm” (40).32

However, despite his commitment to the anonymity of the witnesses, Weiss does name individual prisoners in several instances. In particular, he names those who were tortured to death. At the beginning of the play, witnesses simply refer to victims as “the boy” or “the woman” or “my sister,” but never by name. However, as the descent into the concentration camp hell progresses, witnesses begin to specify the names of the deceased. The “7th Witness” describes in detail the death of Walter Windmuller, who was beaten to death on a swing apparatus (78). As the severity of the violence mounts,

from the Allied countries, and the defendants were only allowed to have German lawyers, not Allied lawyers. Robertson discusses his criticism of the Nuremberg Trials in detail in his book, *Crimes Against Humanity*.  

32 vergingen die letzten Reste / unseres gewohnten Lebens / Familie / Heim / Beruf und Besitz / das waren Begriffe / die mit dem Einstechen der Nummer / augelöscht wurden (37).
more and more victims are mentioned by name: Lili Tofler (a German girl who was shot after helping smuggle a letter to one of the prisoners), Kurt Pachala (who starved to death after fifteen days in a “standing cell”) and Bogdan Glinski (who died after seventeen weeks in a “bunker cell” that could contain up to forty other men). The use of names, and of the particular details of these deaths, seems to run counter to Weiss’s initial wish for personal confrontations to remain anonymous. Yet, while Weiss does not elucidate the reasons behind the namelessness of witnesses as compared to the naming of the dead, it seems as though he gradually succumbs to an impulse, also seen in other types of witnessing writing, to memorialize the dead by naming them, and thus recognizing in some way the importance of their individuality. The victims were dehumanized (and also serialized through the numbering process) and buried anonymously in mass graves, with the intention of being forgotten. Restoring their names posthumously gives them back some semblance of their lost humanity, and recognizes them as concrete, individual human beings. Names are often of particular importance in the remembrance of the dead.

In contrast to this unexplained naming of the dead, Weiss uses the names of the defendants quite deliberately:

Each of the 18 accused, on the other hand, represents a single and distinct figure. They bear names taken from the record of the actual trial. The fact that they bear their own names is significant, since they also did so during the time of the events under consideration, while the prisoners had lost their names.

Yet the bearers of these names should not be accused once again in this drama.33

33 Despite Weiss’ claim that the named individuals “should not be accused once again,” it is difficult not to read the play as a repetition of the accusation, as well as a repetition of the trauma. While they are undoubtedly “symbols of a system,” by using their names, rather than simply using “1st Accused, 2nd Accused, etc.” as he used “1st Witness, 2nd Witness, etc.,” Weiss draws deliberate attention to the fact that these characters represent actual individuals, rather than an abstract collective entity.
To the author, they have lent their names which, within the drama, exist as symbols of a system that implicated in its guilt many others who never appeared in court. (i)

As Weiss writes, the fact that the 18 accused have names is highly significant. They were known and held responsible, both by the criminal court process and by Weiss’s play. Masses only act through the acts of individuals, who in this instance followed “blindly” and made themselves the instrument of the Third Reich. However, when Weiss says he does not want to accuse them again in his play, and does not want to dwell on their individuality, his interest is not to excuse them, but quite the opposite, to underline that they are merely examples of many individuals, i.e., people with names who are guilty. Thus, the 18 names are tokens of all the individual murderers. Further, the “guilt of many others who never appeared in court” suggests several different interpretations: first, the inefficiency of legal systems to persecute those who were clearly guilty; second, the question of whether collective guilt exists, in terms of popular support for the atrocities committed under the Nazi regime; and third, the guilt felt by the younger generation of Germans.

Arendt addresses the issues surrounding these different groups in Eichmann in Jerusalem:

The youth of Germany is surrounded, on all sides and in all walks of life, by men in positions of authority and in public office who are very guilty indeed but who feel nothing of the sort. The normal reaction to this state of affairs should be indignation, but indignation would be quite risky – not a danger to life and limb but definitely a handicap in a career. Those young German men and women who every once in a while – on the

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34 Die 18 Angeklagten dagegen stellen jeder eine bestimmte Figur dar. Sie tragen Namen, die aus dem wirklichen Prozeß übernommen sind. Daß sie ihre eigenen Namen haben ist bedeutungsvoll, da sie ja auch während der Zeit, die zur Verhandlung steht, ihre Namen trugen, während die Häftlinge ihre Namen verloren hatten.

Doch sollen im Drama die Träger dieser Namen nicht noch einmal angeklagt werden. Sie leihen dem Schreiber des Dramas nur ihre Namen, die hier als Symbole stehen für ein System, das viele andere schuldig werden ließ, die vor diesem Gericht nie erschienen. (8)
occasion of all the *Diary of Anne Frank* hubbub and of the Eichmann trial – treat us to hysterical outbreaks of guilt feelings are not staggering under the burden of the past, their fathers’ guilt; rather, they are trying to escape from the pressure of very present and actual problems into a cheap sentimentality. (251)

Arendt’s statement highlights the inadequacy of legal systems in terms of assigning individual responsibility, given the fact that guilty men still functioned as prominent figures in German society after the Holocaust. However, while Weiss’s “Note” suggests that individual defendants should symbolize a larger group of collective perpetrators, Arendt rejects the concept that a criminal trial should deal with anything other than deciding the single case of an individual. She strenuously disagreed with the prosecutor in the Eichmann trial, who also attempted to use the individual defendant as a symbol of a broader phenomenon. Arendt criticized Prime Minister Ben-Gurion of Israel for stating: “It is not an individual that is in the dock at this historic trial, and not the Nazi regime alone, but anti-Semitism throughout history” (19). She believed the strategy, which was also used by the prosecutor at the trial, was “clearly at cross-purposes with putting Eichmann on trial” (19). She concluded: “Despite the intentions of Ben-Gurion and all the efforts of the prosecution, there remained an individual in the dock, a person of flesh and blood…” (20).35

Windham warns against the same potential pitfalls in over-generalizing individual cases, from a slightly different perspective: “The conclusions drawn by the various

35 Arendt also distinguished between political responsibility and individual responsibilities: Many people today would agree that there is no such thing as collective guilt or, for that matter, collective innocence, and that if there were, no one person could ever be guilty or innocent. This, of course, is not to deny that there is such a thing as political responsibility which, however, exists quite apart from what the individual member of the group has done and therefore can neither be judged in moral terms nor be brought before a criminal court….It is quite conceivable that certain political responsibilities among nations might some day be adjudicated in an international court; what is inconceivable is that such a court would be a criminal tribunal which pronounces on the guilt or innocence of individuals. (297-98)
participants in this debate cannot and should not be universalized to describe the attitudes and behaviors of the bulk of the German population. Such overgeneralization, which inevitably results in a fixed ‘definition’ of Holocaust perpetrators, threatens to undermine the validity of insights drawn into specific, individual cases. I will argue instead that the various, even conflicting interpretations of individual cases should be taken together as a whole to describe better the complexity of the issues surrounding Holocaust perpetration and the role of the German public” (xi).

While Weiss’s play does offer several different points of view from the various Witnesses, there are commonalities in their testimony. These commonalities tend to blur the distinctions between specific, individual cases, and lean toward a condemnation of the German public. For example, several of the Witnesses deny any knowledge of the true purpose of the concentration camp. This is exhibited in the testimony of the “1st Witness”:

Prosecuting Attorney: You didn’t hear anything about conditions in the camps
1st Witness: There were so many insane rumors going around you never knew what to think.
Prosecuting Attorney: You hear nothing about the annihilation of people there
1st Witness: How could anybody believe a thing like that (7) 36

The denial of any knowledge of what went on in the camp is taken to the extreme later in the text, in the testimony of the “2nd Witness”: “I thought / those must be the bakeries / I

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36 Ankläger: Erfuhren Sie nichts über die Verhältnisse im Lager
Zeuge 1: Es wurde ja soviel dummies Zeug geredet Man wusste doch nie woran man war
Ankläger: Hörten Sie nichts über die Vernichtung von Menschen
Zeuge 1: Wie sollte man sowas schon glauben (11)
heard they baked bread in there day and night/ After all it was a big camp” (10).\(^{37}\) Here, the claim of ignorance seems outlandish, but perhaps reflects a sense of disbelief among the German that such atrocities could possibly have been occurring.

There is one important distinction made in the play between the Witnesses and the Accused. The Prosecuting Attorney explains: “The accused killed of their own free choice / The witness was forced to be present at the killings” (107). Yet, just as the Witnesses share common strategies in their testimonies, the Accused also use the same tactics. For example, there are several repetitions of denial of individual responsibility, including the following:

\begin{quote}
Accused #8: Anyway what could I do
Orders are orders
And now just because I obeyed
I’ve got this trial hung on my neck
Mr Prosecutor
I’ve always tried to live in peace
just like everybody else
and then suddenly I’m hauled out
and everybody starts yelling about Hofmann
That’s the one that’s Hofmann
they say
What do they want from me (19)\(^{38}\)
\end{quote}

\(^{37}\) “Ich dachte mir / das sind die Bäckereien / Ich hatte gehört / da würde Tag und Nacht Brot gebacken / Es war ja ein großes Lager”(13).

\(^{38}\) Angeklagter 8:
Was sollte ich denn machen
Befehle mußten ausgeführt werden
Und dafür habe ich jetzt
Dieses Verfahren auf dem Hals
Herr Staatsanwalt
ich habe ruhig gelebt
wie alle andern auch
und da holt man mich plötzlich raus
und schreit nach Hofmann
Das ist der Hofmann
sagt man
Ich weiß überhaupt nicht
was man von mir will (20-21)
The sentiment that the accused had “always tried to live in peace / just like everybody else” is repeated in the testimony of “Accused #7”:

Accused #7: all I want is to live in peace
These last years have proved that
I was a hospital attendant
and my patients loved me
They can bear me out on that
Papa Kaduk
that’s what they called me
Doesn’t that tell the whole story
Why should I have to pay now
for what I had to do then
Everybody else did it too
So why of all people
did they arrest me (54-55)\textsuperscript{39}

Here, the \textit{Führerprinzip} and the concept of the \textit{Volksgemeinschaft} are mobilized in the attempts of the Accused to avoid individual punishment. Regardless of Weiss’s use of the actual names of the Accused, the reiteration of the strategy of denial of individual responsibility blurs their status as individuals within the play.

This denial of individual responsibility extends to the use of law as a justification for the atrocities committed by the Accused. At one point, Accused #12 argues that he thought it was suitable for women and children to be part of the transports because “[t]he Family Liability Laws / were in effect then” (148),\textsuperscript{40} and the women and children had been found guilty of participating in crimes. Along with the obvious problems with the

\textsuperscript{39} \textit{Angeklagter 7:}

\begin{verbatim}
ich will nichts anderes als in Frieden leben 
Das habe ich doch gezeigt in den vergangenen Jahren 
Ich war Krankenpfleger 
Und ich war beliebt bei meinen Patienten 
Die können es bezeugen 
Papa Kaduk nannten sie mich 
Sagt das nicht alles 
Soll ich jetzt dafür büßen 
Was ich damals tun mußte 
Alle andern haben es ja auch getan 
Warum nimmt man gerade mich fest (49)
\end{verbatim}

\textsuperscript{40} “Damals bestand eben / die Sippenhaftung” (119).
actual guilt of the prisoners and the horrific nature of their punishment, here, Weiss touches on the problem of the Nazi perversion of the law. This is reiterated by “Accused #12”: “If anybody did raise a question / they were told / What is being done / is done strictly according to the law / It’s no use saying / the laws are different now” (157).41 This is exactly the same justification used by the German woman that Hart describes in “Positivism and the Separation of Law and Morals.” Yet, unlike the legal theorist, Weiss makes no attempt to analyze the moral quandary created by this situation; nor does he offer any concrete answers to the problem.

The play also describes “trials” held in the concentration camp, in which prisoners accused of treason were obviously tortured during interrogations by the “Political Division.” The “1st Witness” states that the prisoners were rarely afforded counsel, and in cases where they were granted legal representation, this role was performed by “[s]omebody from the office staff” (165),42 rather than by a properly qualified attorney. It becomes clear that the “trials” in the concentration camps represent another aspect of the perversion of law under the Nazi regime:

<table>
<thead>
<tr>
<th>Judge:</th>
<th>As a judge43 were you ever troubled about how these confessions were obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Witness:</td>
<td>What can I do if one or another of my people exceeds his authority I strictly and repeatedly enjoined my assistants that they were to conduct themselves correctly</td>
</tr>
</tbody>
</table>

41 “Wenn einer noch etwas fragte / dann wurde gesagt / Was getan wird geschieht nach dem Gesetz / Da hilft es nichts / daß heute die Gesetze anders sind” (126).
42 “Ein Beamter der Dienststelle” (132)
43 The “1st Witness” who judged the concentration camp “trials” described here is not a properly qualified judge, but an army officer (132).
at all hearings
Judge: Were witnesses called at interrogations
1st Witness: Not as a rule
We asked if everything was as stated
and they all said yes
Judge: Then you only had to deliver death sentences
1st Witness: Yes
There were practically no acquittals
Proceedings were instituted only
when everything was perfectly clear (166-67)\textsuperscript{44}

The witness states that the prisoners were then taken to the “Black Wall” and shot.

According to the play, 20,000 people were shot in this manner. That the loss of basic individual human rights was often done under the aegis of the law brings us back to the consideration of whether laws that violate basic concepts of morality ought to be considered as law. Yet, like other fictional legal narratives, Weiss’s play works on a more concrete level rather than a legal theory one. Rather than attempting to answer such questions or to offer insight into theoretical problems, the play illustrates in a tangible way how these laws were used to justify the destruction of lives, leaving the viewer to ponder the meaning of the events.

\textsuperscript{44} Richter: Hatten Sie als Richter keine Bedenken auf welche Art die Geständnisse herbeigeführt wurden
Zeuge 1: Ich kann nichts dafür wenn der eine oder der andere meiner Leute seine Befugnisse überschritten hat
Ich habe meinen Mitarbeitern ständig eingeschärft daß sie bei allen Verhandlungen korrekt aufzutreten hatten
Richter: Wurden bei den Vernehmungen Zeugen gehört
Zeuge 1: In der Regel nicht Wir fragten ob alles stimme und sie sagten all Ja
Richter: Sie hatten also nur Todesurteile auszusprechen
Zeuge 1: Ja Freisprüche gab es praktisch nich Verfahren wurden nur eröffnet wenn alles klar war (132-133)
Revisiting Nazi War Crimes Trials

Thirty years after Weiss’s Die Ermittlung, Bernhard Schlink’s novel, Der Vorleser (1995), revisits the issues surrounding the Nazi war crimes trials. Set in post-WWII era Germany, Der Vorleser begins with the love story of fifteen-year-old high school student Michael Berg, and thirty-six-year-old streetcar ticket collector Hanna Schmitz. The affair is passionate but brief, ending when Hanna abruptly disappears without explanation. Years later, after Michael has become a law student, one of his seminars revolves around a trial. Coincidentally, it is the trial at which Hanna is being prosecuted for war crimes she allegedly committed during the Holocaust. Hanna, it turns out, had once been employed as a concentration camp guard at Cracow, and is charged with participating in selections of women to be sent to Auschwitz. The other main charge against Hanna involves her participation in the deaths of several hundred women at the end of the war. During the evacuation of the camp, the women were locked in a church, which caught fire, resulting in the women’s deaths. However, during the trial, Michael realizes that Hanna is illiterate. Although she participated in the crimes as a guard, the other defendants identify her as the leader, inflating her role in the crimes, and thereby burdening her with the primary responsibility. Refusing to admit to her illiteracy, which would extricate her from this burden, Hanna is sentenced to life in prison, while the other receive lighter sentences.

Years after the trial, Michael becomes a researcher of legal history, marries, has a child, and eventually divorces. In the wake of his divorce, he begins to read to Hanna, this time sending her tape recordings of his readings. Hanna begins to write back to him,

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45 During their love affair, Hanna would frequently ask Michael to read aloud to her. However, it is only during the trial that Michael realizes that her requests stem from her illiteracy.
finally conquering her illiteracy. Although he continues to send books on tape, Michael never writes back to her. After eighteen years in prison, Hanna is to be released on parole. Michael visits her, and sets about preparing for her release, but on the morning she is to be released, she commits suicide in her jail cell.

Unlike many other fictional legal narratives, the novel explicitly introduces legal theory. As a narrator – and law student, and later lawyer – Michael is well situated to comment on the theoretical issues that the trial brings up:

I do remember that we argued the prohibition of retroactive justice in the seminar. Was it sufficient that the ordinances under which the camp guards and enforcers were convicted were already on the statute books at the time they committed their crimes? Or was it a question of how the laws were actually interpreted and enforced at the time they committed their crimes, and that they were not applied to them. What is law? Is it what is on the books, or what is actually enacted and obeyed in a society? Or is law what must be enacted and obeyed, whether or not it is on the books, if things are to go right? (91)

Michael mentions that the professor who raises these questions “remained an outsider among German legal scholars” (91). Here, the issues in the natural law/positive law debate recur, although unlike legal theory, Schlink’s novel brings up these questions without attempting to answer them in any definitive manner.

Again, the novel calls into question the issue of collective guilt. It illuminates the process by which the trial creates its own narrative, which becomes an official version of history. Here, there is an obvious disconnect between law and justice. Michael’s narration of the trial makes it clear that the version of history being created in the

46 Ich errinere mich, daß im Seminar über das Verbot rückwirkender Bestrafung diskutiert wurde. Genügt es, daß der Paragraph, nach dem die KZ-Wächter und –Schergen verurteilt werden, schon zur Zeit ihrer Taten im Strafgesetzbuch stand, oder kommt es darauf an, wie er zur Zeit ihrer Taten verstanden und angewandt und daß er damals eben nicht auf sie bezogen wurde? Was ist das Recht? Was im Buch steht oder was in der Gesellschaft tatsächlich durchgesetzt und befolgt wird? Oder ist Recht, was, ob es im Buch steht oder nicht, durchgesetzt und befolgt werden müßte, wenn alles mit rechten Dingen zuging?” (86).
47 “in der deutschen Rechtswissenschaft ein Außenseiter geblieben” (86-7).
courtroom does not correspond to his memories of Hanna. Hanna’s character is complicated – Michael remembers her purely as a lover. Likewise, the reader first sees Hanna as an ordinary woman in part one of the novel, where she falls in love and lives her daily life, where she is sometimes erotic and beautiful, and sometimes as frightened and fragile as any other human being.

At Hanna’s trial, the court creates a different version of her identity – a Hanna who is a callous and deliberately cruel. The proof of her leadership boils down to the authorship of a certain report, which Hanna could not have written due to her illiteracy. Hanna refuses to acknowledge this, and therefore is unable to deny primary responsibility for the crimes. Resigned to her punishment for crimes in which she did participate, she accepts the version of history the court produces – along with a callousness and cruelty that never existed. Michael justifies his silence on this issue by telling himself that saving her a few years in prison is not worth the risk to her dignity.

All trials use memory to create history – the individual witness’s testimony is judged for its reliability, tested against other witnesses’ testimony. Law is not a passive instrument. Rather, law shapes memory through its selective reconstruction of the past by manipulating witness testimony. But it also shapes memory through its use of legal precedent – the application of past decisions in judging present situations. Austin Sarat writes: “While law responds to historical change, it also makes history” (“Rhetoric and Remembrance” 359). Law is often regarded as a neutral, balanced space in which evidence is carefully weighed and the truth is revealed through an unbiased process of questioning. Der Vorleser undermines this view, and brings up the possibility that
politics, bias, human error and irrationality are all potentially inherent in the legal process.

Hanna’s trial is not simply a reenactment of the past, but a method by which memory is processed and fit into a hierarchy. Certain witnesses’ memories are privileged above others, and certain forms of memory take precedence over others – the written over the oral, for example. Furthermore, Hanna’s illiteracy bars her from complete participation in the trial. Her lawyer is young, a touch incompetent, and Hanna lacks the ability to defend herself properly because she cannot even read the charges against her. Hanna’s forthright offering of her memories of the past do not help her, since they conflict with the version of history that the other defendants’ lawyers are trying to establish. Michael narrates: “When the other defendants’ lawyers realized that such strategies were being undone by Hanna’s voluntary concessions, they switched to another, which used her concessions to incriminate Hanna and exonerate the other defendants. The defense lawyers did this with professional objectivity. The other defendants backed them up with impassioned interjections” (114). Through the course of the trial, the court lays an alternative reality on top of the reality that exists in the narrator’s memory. The legal process uses memory to determine Hanna’s official role in history, whether that role accords with the truth or not.

Schlink’s novel illuminates the opposing functions of law and literature in dealing with trauma: law, for political and practical reasons, provides closure. Literature reopens questions for further consideration, and leaves open those questions. At the heart

48 Als die Verteidiger der anderen Angeklagten merkten, daß solche Strategien an Hannas bereitwilligem Zugeben scheiterten, stellten sie auf eine Strategie um, die das bereitwillige Zugeben ausnutzte, Hanna be-lastete und dadurch die anderen Angeklagten entlastete. Die Verteidiger taten es mit fachlicher Distanz. Die anderen Angeklagten sekundierten mit empörten Einwürfen (110).
of the trial is an attempt to process the dramas and traumas of life so that a judge can reach a decision – an adjudication that will deal with the situation in practical, tangible and final ways. The trial opens issues, yes, but only certain aspects of them – the aspects relevant to the determination of guilt or innocence – and it examines those issues for the primary goal of providing closure.

Shoshana Felman, in her book *The Juridical Unconscious: Trials and Traumas in the Twentieth Century*, writes: “We needed trials and reports to bring a conscious closure to the trauma of the war, to separate ourselves from the atrocities and to restrict, to demarcate and draw a boundary around, a suffering that seemed both unending and unbearable. Law is a discipline of limits and of consciousness. We needed limits to be able both to close the case and to enclose it in the past. Law distances the Holocaust. Art brings it closer” (107). Schlink’s novel affirms this – literature, if not offering an answer, ponders questions left behind by trials. During a reading at the University of Toronto’s Faculty of Law, Schlink commented: “I didn’t write a book about the Holocaust. At best, I wrote a book about the second generation’s feelings about the Holocaust. I wanted to write a novel about people, law, and morality, and then it arose – first of all it is a story about people and the complexities they live with.” Schlink described the profound speechlessness between the first and second generations of Germans after the war, of parents who did not talk and children who did not ask, and of questions that, once asked, became accusatory. In the novel, Schlink writes: “Our parents had played a variety of roles in the Third Reich….We all condemned our parents to shame, even if the only charge we could bring was that after 1945 they had tolerated the perpetrators in their
Clearly, the novel breaks through this speechlessness and explores the consequences of such roles.

Schlink’s novel brings into consciousness tensions that he describes as unresolved and irresolvable. The public reaction to this has been mixed. On one hand, much of the critical response to his novel has been positive, and it has gained a place in popular consciousness as an international bestseller, an Oprah’s book club selection, and recently, a Hollywood movie. However, there are also those who do not want to look at issues that they considered closed. During Schlink’s reading, certain audience members expressed anger that Schlink had dared represent a Nazi guard as a human being with other aspects to her life. There was anger about Hanna’s suicide, which was interpreted as her escape from punishment. One questioner accused Schlink of passing up an opportunity to resolve the tensions between perpetratorhood and victimhood, to which another audience member responded that in history, roles of victim and perpetrator are clearly divided, but not in a book. Again, the roles of law and literature appear to diverge, one seeking closure and the other, to open.

If the trial is an act of judgment, so is the act of reading. The novel re-opens the question of whether either continental European or Anglo-American legal systems are really equipped to handle mass atrocity and collective guilt. As Arendt highlights, these systems are designed to deal with individuals, and existing structures were in many ways unprepared to deal with the unprecedented events of the Holocaust. *Der Vorleser* launches outright criticisms of not only the German legal system, but the act of judging

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49 Unsere Eltern hatten im Dritten Reich ganz verschiedene Rollen gespielt...Wir alle verurteilten unsere Eltern zu Scham, und wenn wir sie nur anklagen konnten, die Täter nach 1945 bei sich, unter sich geduldet zu haben (87-88).

50 While it is beyond the scope of this study, an obvious comparison would be the alternative dispute resolution structure developed by the South African Truth and Reconciliation Commission.
itself. When Michael finishes law school, he finds himself at a crossroads: “I didn’t see myself in any of the roles I had seen lawyers play at Hanna’s trial. Prosecution seemed to me as grotesque a simplification as defense, and judging was the most grotesque oversimplification of all” (179).51

Courts may be inadequately equipped to deal with certain issues, and in the aftermath of many mass traumas, there is a feeling that society’s sense of justice is not entirely satiated by the workings of legal processes alone. There is a sense of the inadequacy of the trial to remedy mass traumas and collective guilt. Where Weiss’s play deals with mass trauma by the foregoing the use of individual characters, Schlink’s fictional trial does the opposite: it collapses collective, public trauma into individual, private trauma, almost as though the collective, the numerous was impossible to comprehend, to deal with otherwise. However, as in Weiss’s play, the question of individual responsibility arises at Hanna’s trial. There, she engages in an argument with the prosecutor. Hanna begins, “But we all knew…” (115).52 The prosecutor counters: “Saying ‘we,’ ‘we all’ is easier than saying ‘I,’ ‘I alone,’ isn’t it?” (115).53 In some ways, just as Weiss’s characters stand as “symbols of a system that implicated in its guilt many other who never appeared in court” (i), Hanna is representative of an entire generation whose complicity and complacency paved the way for the Holocaust.

Hanna herself attempts to cast the question into a collective frame. At trial, Hanna poses the question, “What would you have done?” (111).54 While she ostensibly

51 Ich sah mich in keiner der Rollen, in denen ich beim Prozeß gegen Hanna Juristen erlebt hatte. Anklagen kam mir als ebenso groteske Vereinfachung vor wie Verteidigen, und Richten war unter den Vereinfachungen überhaupt die groteskste (171).
52 “Aber wir alle wußten....” (111).
54 “Was hätten Sie denn gemacht?” (107).
directs the question to the judge, it is a question that extends beyond the courtroom, to
society in general, and to the reader in particular. This kind of generalization of guilt is
similar to what Arendt warns against in *Eichmann in Jerusalem*. However, *Der Vorleser*
seems to lend more serious contemplation to this question, as is evident from the
narrator’s reaction to the judge’s response:

“There are many matters one simply cannot get drawn into, that one must
distance oneself from, if the price is not life and limb.”

Perhaps this would have been all right if he had said the same
thing, but referred directly to Hanna or himself. Talking about what “one”
must and must not do and what it costs did not do justice to the
seriousness of Hanna’s question. She had wanted to know what she
should have done in her particular situation, not that there are things that
are not done. The judge’s answer came across as hapless and pathetic.
Everyone felt so. They reacted with sighs of disappointment and stared in
amazement at Hanna, who had more or less won the exchange. But she
herself was lost in thought.

“So should I have…should I have not…should I have not signed
up at Siemens?”

It was not a question directed at the judge. She was talking out
loud to herself, hesitantly, because she had not yet asked herself that
question and did not know whether it was the right one, or what the
answer was. (112)\(^55\)

Ultimately, however, Hanna’s question is answered in a concrete way by the court
– she is convicted and punished. Hanna’s question echoes the one asked by Simon
Wiesenthal, in his personal story, *The Sunflower*, but in the opposite context – that of the
Jewish concentration camp prisoner when asked for his forgiveness at the deathbed of an

\(^{55}\) »Es gibt Sachen, auf die man sich einfach nicht einlassen darf und von denen man sich, wenn es einen
nicht Leib und Leben kostet, absetzen muß.«

Vielleicht hätte es genügt, wenn er dasselbe gesagt, dabei aber über Hanna oder auch sich selbst geredet
hätte. Davon zu reden, was man muß und was man nicht darf und was einen was kostet, wurde dem Ernst
von Hannas Frage nicht gerecht. Sie hatte wissen wollen, was sie in ihrer Situation hätte machen sollen,
nicht daß es Sachen gibt, die man nicht macht. Die Antwort des Richters wirkte hilflos, kläglich. Alle
empfanden es. Sie reagierten mit enttäuschem Aufatmen und schauten verwundert auf Hanna, die den
Wortwechsel gewissermaßen gewonnen hatte. Aber sie selbst blieb in Gedanken.

»Also hätte ich ... hätte nicht ... hätte ich mich bei Siemens nicht melden dürfen?«

Das war keine Frage an den Richter. Sie sprach vor sich hin, fragte sich selbst, zögernd, weil sie die
Frage noch nicht gestellt hatte und zweifelte, ob es die richtige Frage und was die Antwort war. (107-8)
SS officer: “Was my silence at the bedside of the dying Nazi right or wrong? This is a profound moral question that challenges the conscience of the reader of this episode, just as much as it once challenged my heart and my mind….You, who have just read this sad and tragic episode in my life, can mentally change places with me and ask yourself the crucial question, ‘What would I have done?’” (98).

The literary answer to Hanna’s version of the question is radically different from the legal one. Schlink is himself a judge, but in contrast to his judicial role, he refuses to give a concrete answer, saying during his reading: “I don’t intend to give moral answers, but I think it’s still important how you pose a problem.” In contrast to Arendt’s insistence on limiting the scope of the criminal trial to the question of individual responsibility, one of literature’s hallmarks, as I discussed in Chapter 1, is its ability to allow us to draw more general conclusions stemming from particular individual characters and situations. Literature participates in the formation of collective memory, first of all in that it disseminates stories into the public, influencing views. Legal novels, and ones with trial scenes in particular, often go one step further by “jurifying” the reader; certainly that is the case in this novel, where the narrator states: “I had been a spectator, and then suddenly a participant, a player, and member of the jury. I had neither sought nor chosen this new role, but it was mine whether I wanted it or not, whether I did anything or just remained completely passive” (137). As the narrator becomes a member of the jury, the reader goes with him into the jury box, and is given the relevant facts – albeit from Michael’s perspective – and a role in the act of judgment that the novel demands.
It is Michael’s literacy that gives him a voice – and so the technique he uses to reconcile himself to Hanna’s death is to write about it. Through literature, if not redemption, the author at least carries out a certain responsibility – the duty to witness, at the very least. Although never mentioning other situations, Der Vorleser’s message resonates with other traumas. In a larger context, the Holocaust is not just a Jewish issue, but a global one, recalling Shoshana Felman and Christopher Knight’s insistence that fiction allows us to respond to the many mass traumas that have plagued recent history.

The Legal System as an Oppressive Social Institution

In the aftermath of WWII, the influence of Critical Theory (whose proponents included Max Horkheimer, Theodor Adorno, Friedrich Pollock, Ernst Bloch and Jürgen Habermas) on legal theory has been strong in Germany and other countries, including the United States (as discussed in Chapter 2). One aspect of Critical Theory is the tendency to see certain social institutions, such as the legal system, as tools for and of ideology. Herget writes that its major tenets include the ideas that “most persons in capitalist societies are exploited and repressed by the social system; this opposition is masked by ideology, but liberation can be achieved through the transformation in social institutions and ways of thinking” (6).

The influence of Critical Theory is evident in Böll’s novella, Die verlorene Ehre der Katharina Blum. There, the protagonist, a 27-year-old housekeeper, meets a young man named Ludwig Göttten at a party during Carnival. Katharina takes him home to her apartment, where he spends the night. He informs her the next day that he is a fugitive, and she helps him to escape from the apartment building, which is under surveillance. After Göttten leaves, the police raid her apartment, and begin a harsh investigation. In
conjunction with this investigation, newspaper reporter Werner Tötges begins a slanderous campaign against Katharina, digging into every aspect of her life. He interviews her ex-husband, her former high school principal, and even her dying mother, vastly distorting their comments. Finally, after learning that Tötges has snuck into her dying mother’s room and triggered her death, Katharina, having granted him an exclusive interview, shoots him. She reports her deed to the crime commissioner.

One critic refers to the novella as a “variation of a mystery story,” where “the crime and the murderer are known from the outset,” and further points out the social focus of the novel, which is clear from its subtitle: “How violence originates and where it can lead” (Conrad 121). The novella was a response to the turbulent political climate in West Germany of the late 1960s and early 1970s, during which the “Baader-Meinhof” Group, later known as the Red Army Faction, was founded. In 1968, Andreas Baader and Gundrun Esslin set fire to a Frankfurt department store in protest against the Vietnam war. They received a surprisingly harsh sentence of three years in prison. During Baader’s prison sentence, activist journalist Ulrike Meinhof conspired to help him escape. The Baader-Meinhof Group was founded in 1970, and in 1971 some of its members shot a policeman, leading to a spate of sensationalistic newspaper articles, including those in the Bild-Zeitung (Conrad 114-115). Böll’s 1972 article, “Does Ulrike Meinhof Want Mercy or Safe Conduct?”, severely criticized the newspaper’s actions. Katharina Blum followed in 1974, appearing first in serialized form in the magazine Der Spiegel (Conrad 119). The novella is partly a response to the “psychological destruction” of Professor Peter Brückner, who had given some of the Baader-Meinhof Group

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56 Will Ulrike Meinhof Gnade oder freies Geleit?
members a place to stay. Through the “yellow journalism” of the right-wing press,
Brückner’s reputation was left in tatters (118).

The entire novella unfolds in the space of four days, not in a chronological order,
but piecemeal, as the narrator relates at the beginning, through intermittent pieces of
information taken from the police transcripts, through information given by Blorna and
Hach, and through newspaper accounts. The novella is prefaced with a lawyerly
disclaimer: “The characters and action in this story are purely fictitious. Should the
description of certain journalistic practices result in a resemblance to the practices of the
Bild-Zeitung, such resemblance is neither intentional nor fortuitous, but unavoidable”
(i). While lawyers are not the novel’s protagonists, they play an important role in its
events. The narrator specifies that the novel is a “report” (“Bericht”) based on three
sources: “the transcripts of the police interrogation; Hubert Blorna (attorney); and Peter
Hach (public prosecutor, also high-school and university classmate of Hubert Blorna)”
(7). Thus, two of the three sources are lawyers. Through the disclaimer, the claim to
the status of the “report,” and the use of lawyers as sources for the narrative, the text uses
quasi-legal language, evoking a quasi-legal authority.

At the beginning of the novel, the narrator also highlights the nature of the
narrative:

If this report – since there is such frequent mention of sources – should at
times be felt to be “fluid,” we beg the reader’s forgiveness: it has been
unavoidable. To speak of “sources” and “fluidity” is to preclude all
possibility of composition, so perhaps we should instead introduce the
concept of “bringing together,” of “conduction,” a concept that should be

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57 Personen und Handlung dieser Erzählung sind frei erfunden. Sollten sich bei der Schilderung gewisser
journalistischer Praktiken Ähnlichkeiten mit den Praktiken der »Bild«-Zeitung ergeben haben, so sind diese
Ähnlichkeiten weder beabsichtigt noch zufällig, sondern unvermeidlich (7).
58 Vernehmungsprotokolle der Polizeibehörde, Rechtsanwalt Dr. Hubert Blorna, sowie dessen Schul- und
Studienfreund, der Staatsanwalt Peter Hach (9).
clear to anyone who as a child (or even as an adult) has ever played in, beside, or with puddles, draining them, linking them by channels, emptying, diverting, and rerouting them until the entire available puddlewater-potential is brought together in a collective channel to be diverted onto a different level or perhaps even duly rerouted in orderly fashion into the gutter or drain provided by the local authorities. The sole objective here, therefore, is to effect a kind of drainage. Clearly a due process of order! (8).

The use of the phrase “due process of order” again evokes legal language, reinforcing the authority the text claims for itself. The passage calls attention to the fact that the narrative carries an alternative message to that of the local authorities, an attempt to reroute “sources” in order to impose a certain reading of events. Of course, Böll’s fictional text is anything but a rerouting of “sources,” but in this passage, he establishes a multiplicity of voices in his text, reinforcing the illusion of authority (given the assumption that multiple witnesses are more reliable than one).

Like many other fictional legal narratives, Katharina Blum does not critique the legitimacy of the legal system on an abstract level, as does the Critical Legal Theory movement (see discussion in Chapter 1). Böll does not discuss the substance of the laws themselves. However, the novella is a clear criticism of the concrete workings of the criminal justice system. Böll’s targets are the newspapers, but he also targets the unjust treatment of Katharina by the legal system, and its unwillingness to protect her from

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59 Wenn der Bericht – da soviel von Quellen geredet wird – hin und wieder als »fließend« empfunden wird, so wird dafür um Verzeihung gebeten: es war unvermeidlich. Angesichts von »Quellen« und »Fließen« kann man nicht von Komposition sprechen, so sollte man vielleicht statt dessen den Begriff der Zusammenführung (also Fremdwort dafür wird Konduktion vorgeschlagen) einführen, und dieser Begriff sollte jedem einleuchten, der je als Kind (oder gar Erwachsener) in, an und mit Pfützen gespielt hat, die er anzapfte, durch Kanäle miteinander verband, leerte, ablenkte, umlenkte, bis er schließlich das gesamte, ihm zur Verfügung stehende Pfützenwasserpotential in einem Sammelkanal zusammenführte, um es auf ein niedrigeres Niveau ab-, möglichweise gar ordnungsgemäß oder ordentlich, regelrecht in eine behördlicherseits erstellte Abflussrinne oder in einen Kanal zuleimen. Es wird also nichts weiter vorgenommen als eine Art Dränage oder Trockenlegung. Ein ausgesprochener Ordnungsvorgang! (11)
humiliation. Critics Ulrike Hanna Meinhof\textsuperscript{60} and Ruth Rach write: “Böll does not give us a simple clash between institution and individual. His analysis is more subtle in showing how in behaviour and individual consciousness the policeman or soldier, priest or church-goer, journalist or newspaper reader hands down and accepts in turn patterns of dominance and subordination” (xxxviii). While it is true that individual members of society have their parts to play in Katharina’s humiliation, her treatment by the criminal justice system could easily be described as a clash between institution and individual. Although she is only a witness, the authorities clearly have theories about her involvement with Götten that are completely wrong. Commissioner Erwin Beizmenne, the figure in charge of the investigation, is a prominent representative of institutional law in the novella. He handles Katharina “quite roughly” (19),\textsuperscript{61} and heads up an investigation into every aspect of her life, from a detailed scrutiny of her financial accounts to an interrogation about her personal property. Perhaps the most important aspect of this is that Katharina’s individual rights are completely ignored, through Beizmenne’s actions.

Both of the lawyers, Hach and Blorna, are shown as ineffective, weak people, but in very different ways. Hach is clearly self-interested and a sexual predator. He and another public prosecutor, Korten, participate in the police interrogation. At the beginning of the investigation, Katharina is not charged with any criminal offense, and so is not represented by an attorney. It is clear that Katharina knows Hach socially – she points him out in the interrogation room, saying that she had danced with him at the Blornas’: “…I would dance in the living room with Dr. Blorna and other guests….

\textsuperscript{60} No connection to the Ulrike Meinhof of the Meinhof-Baader Group.
\textsuperscript{61} ziemlich barsch (24).
Sometimes I danced with that gentleman’ – she pointed to Hach, who actually blushed – “over there”’ (29). Hach also participates in the sexual harassment that Katharina endures in the hands of the authorities: “In any event, Hach, who was present when the apartment was searched, is regarded by his friends and acquaintances as ‘sex-starved’ and it is quite likely that such a crude idea [of having sex with Katharina] occurred to him on seeing the extremely attractive Blum girl leaning so casually against her counter, and that he would have liked to ask her that very question [Beizmenne has just asked her, ‘Did he fuck you?’] or perform the crudely specified activity with her” (20). Perhaps most importantly, Hach takes part in the constant misconstruing of evidence and the accusatory questioning that leads to Katharina’s humiliation.

Blorna, the other lawyer who features prominently in the novella, becomes victimized by the press along with Katharina, albeit to a lesser extent. He employs Katharina as a housekeeper, and becomes a target of the media when the Zeitung publishes a picture of him and his wife, with the caption, “Dr. Blorna, highly paid corporation lawyer, with his wife Trude beside the swimming pool at their luxury home” (43). The Zeitung reporter coerces him into giving a statement about Katharina’s character by telling him “that was a bad sign and could be misconstrued, for to refuse to comment on her character in a case of this kind – and this was a front-page story – was a
clear implication of a bad character…” (35). Blorna says merely, “Katharina is a very intelligent, cool, level-headed person.” The reporter then distorts this comment, misquoting Blorna as saying that Katharina is “ice-cold and calculating” (37). After his reputation is dragged through the mud in the newspapers, Blorna admits defeat: “I’m no match for the News anyway” (92). Blorna’s own reputation is further tarnished when, in an attempt to help clarify whether the Zeitung’s interviews about Katharina were distorted or not, he is branded as a Communist himself.

Blorna is strictly a corporate lawyer and has never done any criminal work. Yet he somehow ends up being Katharina’s defense lawyer, despite the possibility of being rejected as counsel because he is too personally involved in the case. Further, Katharina convinces him to defend Götten’s case as well, garnering him even more slander by the press: “It is not hard to imagine the kind of thing the News wrote about him, about Götten and Katharina, about Mrs. Blorna” (124). Blorna’s reputation is damaged beyond repair, and while he retains his job, he is demoted: “He still acts on behalf of Lüstra and Haftex but no longer at the international level, only rarely at the regional and mostly at the local level. In other words, he has to grapple with petty defaulters and troublemakers…” (125). Further, his personality and even his personal hygiene are affected: “Blorna, who used to be known as liberal-minded and a bon vivant, a popular,

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65 das sei aber ein schlechtes Zeichen und könne bös mißdeutet werden, denn Schweigen über ihren Charakter sei in einem solchen Fall, und es handele sich um eine »front page story«, eindeutig ein Hinweis auf einen schlechten Charakter…. (47).
66 Katharina ist eine sehr kluge und kühle Person (47).
67 eiskalt und berechnend (48).
68 Ich kann gegen die ZEITUNG ohnehin nicht an (123).
69 Man kann sich ausmalen, was die ZEITUNG alles über ihn, über Götten, über Katharina, über Frau Blorna schrieb (166).
70 Er ist natürlich noch für die »Lüsträ« und die »Haftex« tätig, aber nicht mehr auf internationaler Ebene, sogar nicht mehr auf nationaler, nur noch selten auf regionaler, meistens auf lokaler, was bedeutet, daß er sich mit miesen Vertragsbrechern und Querulanten herumschlagen muß… (168).
jovial colleague who gave wonderful parties, is beginning to take on the air of an ascetic
and to neglect his appearance, to which he has always attached great importance; and
because he is genuinely neglecting it, not just as a fad, some of his colleagues are even
saying that he is over-looking the most basic personal hygiene and no longer smells as he
should….In short: a considerable change is taking place in him” (126-27).71 Blorna’s
victimization contrasts with the images of lawyers in other countries in this study. As
discussed earlier, Anglo-American lawyers, whether heroïcized or demonized, are usually
shown as intelligent and able to master the complex workings of the legal system. Here,
Blorna is reduced to an injured party himself, and appears helpless to do anything about
his situation.

Perhaps the most important element of the representation of the legal system here
is its inability to stop the press from ruining Katharina’s life. At one point, Miss
Woltersheim, Katharina’s godmother and ally, seeks help from the lawyers, but is denied:

At this point in her statement, Miss Woltersheim was informed that it was
not the job of the police or the public prosecutor’s office “to pursue certain
undoubtedly reprehensible forms of journalism by bringing criminal
charges.” Freedom of the press was not to be lightly tampered with, and
she could rest assured that a private complaint would be handled with
justice and a charge on grounds of illegal sources of information brought
against a person or persons unknown. It was Korten, the young public
prosecutor, who, in an impassioned plea for freedom of the press and the
right to protect the identity of sources of information, stressed that a
person who did not keep or fall into bad company could obviously never
give the press cause for wild and potentially damaging reporting. (67)72

71 …er, der als Liberaler mit Bonvivant-Zügen galt, ein beliebter, lebenslustiger Kollege, dessen Parties
beliebt waren, beginnt, asketische Züge zu zeigen, seine Kleidung, auf die er immer großen Wert legte, und
da er sie wirklich, nicht auf eine modische Weise vernachlässigt, behaupten manche Kollegen sogar, er
betreibe nicht einmal mehr ein Minimum an Körperpflege und beginne zu riechen...Kurz: es geht eine
erhebliche Veränderung mit ihm vor sich (170).

72 An diesem Punkt der Aussage wurde auch Frau Woltersheim darüber belehrt, daß es nicht Sache der
Polizei oder der Staatsanwaltschaft sei, »gewisse gewiß verwerfliehe Formen des Journalismus
strafrechtlich zu verfolgen«. Die Pressefreiheit dürfte nicht leichtfertig angetastet werden, und sie dürfe
nicht davon überzeugt sein, daß eine Privatklage gerecht behandelt und gegen illegitime
Informationsquellen eine Anzeige gegen Unbekannt erhoben werde. Es war der junge Staatsanwalt Dr.
Clearly, the events of the novella illustrate the fallibility of opinions like Korten’s, which privileges collective over individual rights. Katharina’s inability to get protection from the legal system – in fact, its complicity in the destruction of her character – leads directly to her decision to take justice into her own hands.

Like many other fictional legal narratives, Katharina Blum deals with the divide between law and justice on a very concrete level. However, the political divide in the novel between left- and right-wing politics highlights the fact that concepts of law and morality are both contingent on social context and norms that are subject to change.73 The novella provides an in-depth look into the previously blameless life of Katharina, and we are emotionally prepared to back her when, at the end of the novel, she admits freely that she shot Tötges. On some level, the text appears to justify vigilante tactics, in this case, in the cold-blooded murder of a man. Unfortunately, this is the interpretation of the novella that a group called “2 June” chose when it used Böll’s text to justify the shooting of Judge Günter von Drenkmann in November 1974. The group issued a statement: “What else did Böll mean with his Katharina Blum, if not that the shooting of a representative of the ruling power apparatus is morally justifiable. However, when ‘literary violence’ becomes material violence, the same Böll goes over to the side of those whose words he has just pilloried as lies” (qtd. in Conrad 120). While the group’s statement attempts to blur the divide between fiction and fact, I would argue that the inability to distinguish between ‘literary violence’ and ‘material violence’ – between the actions of fictional characters and the consequences of murder in the real world – is a

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Korten, der hier ein fast leidenschaftlich zu nennendes Plädoyer für die Pressefreiheit und für das Informationsgeheimnis hielt und ausdrücklich betonte, daß, wer sich nicht in schlechte Gesellschaft begebe oder in solche gerate, ja auch der Presse keinerlei Anlaß zu vergrößerten Darstellungen gebe. (88-9)

73 As previously discussed in Chapter 2, in relation to To Kill A Mockingbird.
marker of insanity. However, this unfortunate incident illustrates the potential influence of fictional legal narratives to affect views of the legal system and those who work within it.

**Conclusion**

Thus, in the relatively few German fictional legal narratives that exist, the image of the advocate in Germany (and also the lack of such images) contrasts greatly with representations in the other countries studied here. With the exception of the recent “scripted reality” courtroom shows on German television, the German view of the legal system contrasts sharply with the way that lawyers are viewed in the Anglo-American tradition. The tendency to view the law through the “filter” of the abstract concept of the “Legal Order,” the different roles of German judges and lawyers, and the perversion of law under the Nazi regime are factors that yield very different representations from those found in the other countries in this study. Here, the lawyer is less likely to function as a focalizing figure for the conceptualization of law. Nonetheless, Weiss’s *Die Ermittlung*, Schlink’s *Der Vorleser* and Böll’s *Die verlorene Ehre der Katharina Blum* open up important questions concerning the nature of individuality in the law. Again, unlike legal theory, these narratives seldom offer concrete answers, but rather leave readers to form their own conclusions about the connections between law and justice/morality.
Conclusion

The Challenge of the “Universal Intellectual”

Clearly, different cultures have different individual figures through which they anthropomorphize abstract concepts like law, justice, and morality. At one end of the spectrum of these five countries, the United States is the most likely to conceptualize law through human figures, while Germany is the least likely to do so. However, even in American representations of law, where dominant images of lawyers are sometimes based on iconic images (e.g., Atticus Finch), these representations are constantly changing. Further, even in those cultures whose legal systems share similar structures, and despite the undeniable influence of American culture, each country has created figures that are unique to itself. There is no single factor that determines the production of fictional legal narratives and the shape of them. Fictional legal narratives must be understood in their particular contexts, not just in the context of the structure of legal systems, but also the history, politics and frequently in the context of developments in legal philosophy in a specific country.

Consequently, theory (be it legal, literary or interdisciplinary) produced with reference to a limited cultural context must be approached with care when applied cross-culturally. As I mentioned in the introduction, much of the American theory in the law and literature movement is inapplicable to continental European representations, but the reverse is also true, or at least, again, it must be approached with care in cross-cultural contexts. For example, Foucault postulates a difference between two types of intellectual, the “universal” vs. the “specific”:

It is possible to suppose that the “universal” intellectual, as he functioned in the nineteenth and early twentieth centuries, was in fact derived from a quite specific
historical figure: the man of justice, the man of law, who counterposes to power, despotism, and the abuses and arrogance of wealth the universality of justice and the equity of an ideal law. The great political struggles of the eighteenth century were fought over law, right, the constitution, the just in reason and law, that which can and must apply universally. What we call today “the intellectual” (I mean the intellectual in the political, not the sociological sense of the word; in other words, the person who utilizes his knowledge, his competence, and his relation to truth in the field of political struggles) was, I think, an offspring of the jurist, or at any rate of the man who invoked the universality of a just law, if necessary against the legal professions themselves (Voltaire, in France, is the prototype of such intellectuals). The “universal” intellectual derives from the jurist or notable, and finds his fullest manifestation in the writer, the bearer of values and significations in which all can recognize themselves. The “specific” intellectual derives from quite another figure, not the jurist or notable, but the savant or expert….We accept, alongside the development of technico-scientific structures in contemporary society, the importance gained by the specific intellectual in recent decades, as well as the acceleration of this process since around 1960. (Discipline and Punish 70-71)

Yet, Anglo-American figures are clearly distinct from continental European ones. While Foucault’s insights apply to the French context,¹ I would argue that the “historical figure” of the “man of justice, the man of law” is still alive and well in the Anglo-American context, although he now inhabits the realm of popular culture as much as that of the cultural “elite.” Here, it seems that the enthusiasm for legal figures is more than simply nostalgia. His inheritor, the “universal” intellectual, “the bearer of values and significations in which all can recognize themselves” (Foucault, Discipline and Punish 70) is also thriving in contemporary Anglo-American popular culture.² Foucault’s conception of the “universal intellectual” marries three separate elements in one figure: “the man of justice, the man of law” and “the bearer of values and significations,” i.e., morality.

¹ Although I would also argue that the popularity of the juge d’instruction figure mitigates this somewhat.
² The figure of Erin Brockovitch immediately comes to mind – while not a writer and despite her lack of education, she stands as an example of a “bearer of values and significations in which all can recognize themselves” (Foucault, Discipline and Punish, 70), as do many other non-lawyer protagonists of human rights-oriented stories.
Foucault’s formulation of the “universal intellectual” also recalls screenwriting guru Robert McKee’s formulation of the ideal protagonist, as a character with “intimate problems that ramify outward into the world” (295). However, McKee’s formulation does not necessarily mean that solving the intimate problems of the individual figure equates to any concrete answers in the larger context. The frequently cynical attitudes toward the legal system that these narratives offer (and as we have seen, the tone is almost overwhelmingly dark, with the exception of television programs in all five countries) mean that more questions about the nature of the legal system are produced than answers. Yet, it is the anthropomorphized figures of law – the lawyers, judges or juges d’instruction – whose often positive individual images counteract the negativity associated with collective entities in the form of inefficient legal systems, corrupt law firms and repressive regimes.

However, most of the criticisms tend to be process-oriented, rather than substantive criticisms of the law or the existence of legal systems. The field of study that we call “law and literature” may be a misnomer, not only in the sense that we have moved beyond the study of literature to include other forms of culture, but also because so much of what goes on in “legal” novels is not actually an interaction with the substantive elements of the law, but with the process-oriented elements of the legal systems. So the term is at once too narrow, but also too broad. There are aspects of the law on which no literary text, film or television show has ever touched, in my view because of the extremely concrete level on which fictional legal narratives conceptualize the law.
Just as Foucault’s conception of the “universal intellectual” unites law, morality and justice, the fictional legal narratives studied here share an almost unanimous call for the union of these three concepts. While some of these narratives may acknowledge or even demonstrate the fact that legal systems may exist independent of moral guidance, the vast majority reflect the belief that law ought to be guided by morality and justice. Some of these narratives (e.g., *To Kill a Mockingbird, A Man for All Seasons*) are more obvious examples of natural law theory than others. However, despite the undeniable influence of positivism, none of these narratives has a protagonist who is clearly a proponent of positive law.

**The Progression of the Law and Literature Movement**

In Julie Stone Peters’s retrospective article, “Law, Literature and the Vanishing Real: On the Future of an Interdisciplinary Illusion” (2005), she tracks the development of the movement over the last twenty-five years:

The rise of the law-and-literature movement was connected with residual institutional anxieties and disciplinary shifts in both literary and legal studies. A partial list of these in literary studies might include the accession to tenured positions of the civil-rights and Vietnam-era generations, inspired by the memory of civil rights battles won in the courts; the political frustrations of high theory and the felt need to inject the metaphysical politics of deconstruction with more concrete institutional politics; the perceived failure of the shrinking Marxist project as a critical mode of political criticism and a turn toward the insider politics of law. A parallel list of shifts in legal studies might include the shrinking of the humanities academic job market in the 1970s, leading humanities PhDs toward legal academia; the slow deprofessionalization of legal study, from the 1970s on, in the attempt to establish law as an academic field comparable to other fields; the demand for sophisticated theories of constitutional interpretation to sustain the achievements of the civil rights movement; the felt need for a humanist counterforce to law and

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3 There has also been a breakdown of conventional academic divisions and a general shift toward interdisciplinary studies in other academic areas, not just in literary and legal studies.

4 Conversely, lawyers have become increasingly disillusioned with legal practice and are more inclined to change careers, prompting a return of some to graduate studies in the humanities, as I did.
The focus on the progression of the academic movement, in my opinion, needs to be balanced by the recognition that, in the words of Charles Bernstein, “[t]heory is never more than an extension of practice” (qtd. in Hutcheon, A Poetics of Postmodernism 222). In addition to the list of issues that have affected academics, it is important to note the impact of some of the same factors on creative writers, including the importance of legal issues to writers of the civil-rights generation, the increasing disillusionment with the legal system and/or the practice of law that has driven many lawyers to creative self-expression, not to mention the seemingly-unending appetite of the public for law-related narratives. Stone Peters describes the law-and-literature movement with minimal reference to the texts, although fictional legal narratives have become a staple of contemporary Anglo-American culture. It is also important to recognize the inherent connections between the disciplines, in terms of both the conceptual territory that law shares with fictional legal narratives and their common linguistic, narrative and hermeneutic strategies.

Stone Peters also bemoans the movement’s history of “discipline envy” (448), in which scholars initially believed that “law would give literature praxis; literature would give law humanity and critical edge” (448). According to her, this vision only resulted in the “splitting and transfer of disciplinary desire: to project the humanist real onto literature was implicitly to accept the law as a system of utilitarian calculus; to project the political real onto law was implicitly to acknowledge the inconsequence of the aesthetic” (449). However, Stone Peters also believes that the movement has transcended this “shared longing” (448):
One of the sleights of hand of interdisciplinarity is that it deludes us into the belief that we’ve escaped our disciplinary boundaries. But that delusion also allows us freedom from interdisciplinary longing. Such freedom and our now more comfortable habitation in disciplinary mobility are well suited to the spatial and geographic paradigms we currently inhabit. We think of ourselves as global: rather than defy boundaries, we leap over them, less disciplined, perhaps, but also less frustrated by imaginary constraints. Worrying less about how to find something real on the other side of the disciplinary divide, we have more room to think about the consequences of disciplinary tourism, to ponder the new terms we’ve erected as touchstones of our common project, and to offer richer readings of those real (and sometimes hyperreal) objects of our study. (451)

However, while the academic movement may well be driven by the sociological factors Stone Peters lists in her article, the real connections between literary and legal studies are undeniable. As I know from personal experience and being fortunate enough to have training in both disciplines, it is exactly this “comfortable habitation in disciplinary mobility” that enables us not only to think about, but to learn to avoid the “consequences of disciplinary tourism.” Unlike Stone Peters, I believe that interdisciplinarity is more than just a “delusional” means that justifies a “real” end. By immersing ourselves deeply and meaningfully in studying the relationships that exist between two disciplines, we cease to be “disciplinary tourists.” We begin to bridge the gaps in knowledge that have existed because of previous boundaries.

While it is important to close these gaps, and to leap over disciplinary boundaries, it is also important to do so while maintaining a focus on the texts themselves, with close attention to the specific cultural factors that shape them, and an attempt to understand the ways in which key concepts like law, justice and morality manifest themselves within disciplines and also within genres. This is essential because, as I discussed in Chapter 1, we live in an era of mass participation, where real trials are piped into our living rooms as entertainment, and where forms of entertainment like fictional legal narratives impact our
notions of law, justice and morality. We are put in the role of the lawyer/judge/jury on a daily basis – in Foucauldian terms, we are called upon to be the “judges of normality.”\(^5\)

It is vital that we understand the concepts that underlie the judgments we make.

American popular legal culture continues to influence other cultures in unexpected ways, and the cross-cultural impact of reality television\(^6\) is one area in which this influence has yet to be fully examined. Continuing to track these responses will allow us to maintain an understanding of the differences and similarities between cultures in the increasingly globalized marketplace that otherwise threatens to overwhelm us with homogenized images. However, American culture also drives creative responses in which other cultures articulate and celebrate their uniqueness, and the works studied in this dissertation demonstrate the wide range of creative responses. In the intersection between cultures, in the crossroads between disciplines, we are given the opportunity and the tools with which to make sense of these creative responses, and to make light of how they function in contemporary society. Here, the challenge exists for us to be the “universal intellectuals” that Foucault implicitly challenges us to be.

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\(^5\) See my discussion in Chapter 5.

\(^6\) E.g., as mentioned in relation to German daytime television programming in Chapter 6.
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