

University of Wollongong

Research Online

Faculty of Law, Humanities and the Arts -
Papers (Archive)

Faculty of Arts, Social Sciences & Humanities

2004

Changing the channel: What to do with the critical abilities of law students as viewers?

Cassandra Sharp

University of Wollongong, csharp@uow.edu.au

Follow this and additional works at: <https://ro.uow.edu.au/lhapapers>



Part of the [Arts and Humanities Commons](#), and the [Law Commons](#)

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au

Changing the channel: What to do with the critical abilities of law students as viewers?

Abstract

It is now generally acknowledged within the cultural studies tradition that media can actually be consumed in a mediated sense - that is, oppositionally and not hegemonically. The viewer is no longer seen as powerless and 'vulnerable to the agencies of commerce and ideology', but rather as both selective and active. Law students, as viewers, are constantly interpreting, transforming and producing meaning in relation to the images of law presented to them. They are utilising this process to not only make sense of the law, but also to analyse and reflect on their personal ideas and values in light of their understandings. Of course, as students of the law, they are expected to have (or to develop during their studies) some capacity for evaluating legal issues from a critical perspective. But what other uses could be made of such critical abilities in relation to their legal identity construction and how they view the role of lawyering in general? This article suggests that legal education should recognise the usefulness of pop cultural representations as a catalyst to stimulate our law students' critical abilities, and makes suggestions of how best to harness them.

Keywords

students, viewers, changing, do, channel, law, abilities, critical

Disciplines

Arts and Humanities | Law

Publication Details

Sharp, C. (2004). Changing the channel: What to do with the critical abilities of law students as viewers?. Griffith Law Review, 13 (2), 185-199.

CHANGING THE CHANNEL

What to Do with the Critical Abilities of Law Students as Viewers?

*Cassandra Sharp**

It is now generally acknowledged within the cultural studies tradition that media can actually be consumed in a mediated sense — that is, oppositionally and not hegemonically.¹ The viewer is no longer seen as powerless and 'vulnerable to the agencies of commerce and ideology', but rather as both selective and active.² Law students, as viewers, are constantly interpreting, transforming and producing meaning in relation to the images of law presented to them. They are utilising this process to not only make sense of the law, but also to analyse and reflect on their personal ideas and values in light of their understandings. Of course, as students of the law, they are expected to have (or to develop during their studies) some capacity for evaluating legal issues from a critical perspective. But what other uses could be made of such critical abilities in relation to their legal identity construction and how they view the role of lawyering in general? This article suggests that legal education should recognise the usefulness of pop cultural representations as a catalyst to stimulate our law students' critical abilities, and makes suggestions of how best to harness them.³

Introduction

As law students begin their study of law, which discursive resources will they draw upon to make sense of and interpret their chosen career? What information and/or misconceptions do they bring to this process and what abilities do they develop in order to decipher among them? Based on an analysis of a pilot study of student discussions about television lawyers, it has

* Lecturer, Law Faculty, Wollongong University and PhD candidate. The primary study referred to in this article was generously supported by a grant from the Law Foundation Australia. I also acknowledge the invaluable research assistance provided by Rachel Young.

¹ Liebes and Katz (1989), p 204. Barker also argues that there is now enough work on television audiences to draw the conclusion (among others) that the 'audience is conceived of as active and knowledgeable producers of meaning not products of a structured text' and that 'audiences make application of the meaning to their lives': Barker (2000), pp 269–70.

² Barker (2000), pp 269–70.

³ It should be noted that the encouragement of students' critical abilities is not the sole responsibility of first-year teachers, but rather that can and should be undertaken at any stage within the degree structure.

previously been argued by the author⁴ that law students have dichotomous aspirations and expectations of their future careers. They aspire towards altruism while simultaneously desiring status, money and power, and they use television lawyers as role models that assist in this construction of their legal identities.⁵ In this article, the level of inquiry into student discussions is taken a step further to expose the subtle ways in which the students individually approach and understand lawyering practices. That is, the focus is on evaluating the *critical abilities* of law students as revealed in a primary study of focus group discussions. Through the process of utilising television lawyers' actions and behaviours to articulate their own personal expectations and aspirations, students actually reveal their significant capacity for critical reflection and analysis of their own position. The legal world into which students will graduate demands that they be able to negotiate and interpret a variety of texts, identities and experiences. It is therefore crucial for legal education to not only encourage, but also explicitly prioritise, the stimulation and development of these burgeoning critical and 'affective'⁶ skills in law students.⁷

Changing the Channel

Over the last year, I have had the opportunity to be part of a small group of international academics who are interested in comparing what first-year law students in different countries think about the character of lawyers and where they obtained the information that helped them form this opinion. In particular, the group's focus was on media effects and the extent to which first-year law students draw their information and opinions from fictional representations of law and lawyers in popular culture, with a comparison of these opinions and information sources across our various institutions in the United States (UCLA), England (Westminster), Scotland (Strathclyde), Germany (Bochum), Argentina (Buenos Aires) and Australia (Wollongong). The project involved conducting the same survey among our first-year law students during their first week of law school 2002–03, before the students could be influenced by their legal education. The survey asked students to indicate what sources they found helpful in forming their opinions about lawyers, and directed them to specifically identify those opinions with questions about lawyer prestige, whether lawyers deserved their incomes and whether lawyers were honourable and trustworthy.

⁴ Sharp (2002).

⁵ Sharp (2002).

⁶ This notion is discussed in the last section on legal education.

⁷ This is, of course, not to argue that encouraging 'critical abilities' (as I have termed them) is currently not a priority in many courses, but simply that sometimes it can be relegated to a secondary objective, or a happy by-product of the primary curriculum. The argument as developed later in the paper is that there are possibilities for dealing with students' development of such critical abilities in a much more explicit, active manner within the curriculum and/or degree structure.

This transnational media effects study found⁸ that a large number of law students in all countries reported that movies and television shows were actually quite helpful in forming their opinions about lawyers. News and pop culture media were generally more helpful than having lawyers as friends or family members, personal experience with lawyers, conversations with family and friends and classes in school. Indeed, Australian students seemed to consume the most popular culture: 48 per cent of our students watched one or more legal television shows regularly and 76 per cent had seen three or more of the movies listed. Both these figures were substantially higher than for students in the other jurisdictions (including the US students⁹). Underpinned by the active audience theory,¹⁰ which contends that audiences are not cultural dopes but instead are active producers of meaning from within their own cultural context, this effects study suggests that pop cultural representations of lawyers have played an important part in constructing the first-year law students' understanding of what lawyers are like and what they do.

To legal academics, however, the thought of law students being influenced by glamourised versions of law as depicted in *Law & Order*, *The Practice* and *Ally McBeal* could be a little traumatising, as the reaction to statistics like those presented above is often a burning desire to convince students to change the channel — to switch to representations that somehow show something more 'real' and educational about the law. But the 'true picture' of the law, according to one legal academic, is simply another competing 'version' of reality, and we should therefore acknowledge the fluidity of our own constructed reality and not give in to this desire to 'change the channel' for our students. The transnational media effects study has indicated that the remote control is firmly within the grasp of the student. Why not harness and explore these 'realities' with the students as they channel surf their way towards developing an understanding and a framework of what it means to be a lawyer?

Methodology

If, then, students are extremely active in the process of consuming images of law and they possess various critical abilities which enable them to construct 'their own realities out of the...material provided by the cultural product'¹¹ of the legal drama, how can these critical abilities best be identified and evaluated?

⁸ Asimow et al (2004).

⁹ This was surprising given that the bulk of films and television productions viewed by Australians are produced in the United States. In fact, US students had only seen 66 per cent of the movies listed. Interestingly, Scottish students had seen the fewest, with only 55 per cent having seen three or more movies.

¹⁰ See further Morley (1992) and Barker (2000), p 11.

¹¹ Asimow et al (2004), p 4.

Empirical evidence for critical ability in television viewers is growing. As stated earlier, this article is based on the primary study of a project¹² involving focus group discussions of first-year law students. As a way of gaining insight into the transformed and shared meanings of our students, focus group discussions of television lawyers provide a mechanism for opinion articulation and development in a mutually stimulating and spontaneously reactive environment. The analysis of the discussions is philosophically based in hermeneutics and concentrates on the interactive relationship between text and audience.¹³ This perspective, which recognises the individual transformative process and allows for the exploration of student articulations of their interpretations, involves an interpretive literary analysis where the discussion or 'talk' becomes the text from which to unpack the understandings of our law students. For this project, the 'text' — the student discussions — was coded and analysed in line with an understanding that viewers have distinct patterns of involvement¹⁴ with the programs, primarily in what is termed the critical and referential realms. That is, viewers may use the program referentially as a connection to real life (including their own), utilising it to form expectations and ideas about certain aspects of their lives, or they may use it more critically by showing an 'awareness of the program as separate from reality and concerning themselves with the accuracy of that relationship'.¹⁵ Of course, 'a sophisticated viewer should be seen as a commuter between the referential and the critical'.¹⁶ Indeed, the data from the primary study reveal that law students constantly commute between the two realms. For example, they make 'critical' statements about the stereotyping of, say, Bobby Donnell on *The Practice* as an assertive male lawyer; and in the next breath speak 'referentially' as if he were real, and personally react to his behaviour as if the show were actually a documentary.

With this basic distinction in mind, this article is primarily devoted to a discussion of the critical realm. But what do 'critical abilities' involve? Liebes and Katz, in the context of comparing cross-cultural readings of *Dallas*, argue that the 'critical' includes an ability to discuss programs as 'art' or constructions — that is, to recognise or define genres and formulaic conventions,¹⁷ and an ability to perceive a 'theme' or 'message' in the fictional narrative.¹⁸ Further, they argue that 'critical' viewing also encompasses the viewer's 'pragmatic awareness' of the program by their cognitive, affective and social self. Following their lead, I have utilised the same understanding of

¹² This project of analysing focus group discussions about television lawyers is part of doctoral research into the influences and expectations of first-year law students.

¹³ Here the reader is taken to approach the text with 'certain expectations and anticipations which are modified in the course of reading to be replaced by new "projections": Barker (2000), p 271. See also Gadamer (1976) and Iser (1978).

¹⁴ Liebes and Katz (1993), p 100.

¹⁵ Liebes and Katz (1989), p 209.

¹⁶ Liebes and Katz (1989), p 208.

¹⁷ Liebes and Katz (1989), pp 204–5.

¹⁸ Liebes and Katz (1989), p 205.

criticism to code student perceptions in terms of the ways in which they critically negotiate with and use legal programs.

Practically, this has meant isolating those statements that refer to the program as a text or construction, with each statement further coded using subcategories of theme, message, 'reality', genre, dramatic function and pragmatism. This article focuses first on the students' constant criticism of the portrayal of 'reality' in the various programs, and second, on their identification of the theme and messaging in the narrative. It then canvasses the pragmatic awareness of our students and suggests how we might be able to utilise this within legal education.

Critical Abilities

Questioning 'Reality' through Identification of Dramatic Function in the Narrative

Students exhibit extensive critical ability in the syntactic domain — that is, they reveal an understanding of the component elements of the genre of television legal dramas and the dramatic function of the narrative and characters. By utilising this criticism, students are able to reflect on the 'type' or 'version' of reality that is constructed within the programs, and this in turn reveals the type of reality they have constructed for themselves. Take, for example, this short discussion from one of the groups:

A: Well, every single show has some major fantastic new issues ... where I think in real practice it's probably just lots of paperwork every day and maybe occasionally they'll get something really juicy but you know *they don't have to cater to audiences* ...

C: [Real life] is not just one interesting case after the other ... [on television] they're always the kind of cases that actually set precedents ... there's always something new and exciting that hasn't really been looked at before.

F: And you never actually see them doing any sort of research.

D: No, no, they're always at the bar ...¹⁹

The legal drama genre portrays exciting legal work through the use of week-by-week storylines: students postulate that every show introduces a 'fantastic new issue'. In acknowledging this element of television production, the students challenge themselves to question the representation in light of their own assumptions about reality. By critically evaluating the formula of television shows and the various elements of dramatic function, the students are identifying and formulating their version of reality. In an almost derisive tone, the students in the discussion above are critical of the 'reality' portrayed about what lawyers do in their daily grind: always exciting new areas of law, setting precedents, but never any research. They recognise that, as ratings is a key motivator in television production, drama, excitement and tension are all

¹⁹ Focus Group (FG) 1, p 4.

necessary to attract high ratings, and they use this to reflect on what being a lawyer actually must involve.

In each of the focus groups, the students make many such observations about the connection between the representation and reality, especially in relation to everyday tasks involved in being a lawyer. In one group, two participants discuss the more boring aspects of real law and how these are *not* portrayed on television — one says: 'In real life it's ... *definitely* not as exciting as it seems on television, you *probably* end up doing like lots of mundane routine things.'²⁰ It is interesting that this student uses contradictory language to assert their understanding of reality: on the one hand, the assertion is a clear picture — real lawyering is *definitely* not as exciting; but on the other hand, their construction is not so declarative — the use of the word *probably* in relation to mundane tasks indicates that perhaps the student is not so sure. Despite this contradiction, it is clear that an individual assessment of what is 'real' is utilised to piece together a picture of their future career.

Because the students often made reference to the genre's clear absence of the more dreary aspects of lawyering and consistently referred to them collectively as 'paperwork', they were often asked to clarify why they had the assumption that this comprises the total sum of the work that lawyers do:

A: Well not just paperwork, but the thing is that those sorts of ... the more mundane parts of practising law don't make for good TV shows, so I don't think they show that part of it.

B: Time sheets and stuff.

D: I don't think the career of every lawyer would make an interesting television show.

B: Yeah, the highlights over a whole lifetime might be enough information to make one episode or something.

I mean they'd die of, like, you know, stress-induced diseases because, like, the amount of pressure that they're under every day — *you'd* just sort of die.²¹

In acknowledging dramatic function and formulaic aspects of legal dramas, the students in this interaction believe that because television does not show it, the mundane parts of lawyering *must* be part of reality. To the students, what is shown must be a 'constructed' version of what a lawyer's day is like — a real lawyer's career highlights or excitements over a lifetime would hardly be enough for one episode, and television lawyers are under so much pressure that there is no way they could survive. Students are questioning the constructed reality on television, and in so doing are constructing their own version of what 'reality' for a lawyer must be: to them, being a 'real' lawyer could not possibly involve such constant excitement, drama and workload.

²⁰ FG 6, pp 19–20.

²¹ FG 1, pp 4–5.

On other occasions, when discussing quite passionately the way that television lawyers never seem to do any research, one student concludes the conversation by remarking: 'But that's television for you, like, it's not real ...' This statement reflects the stance that we should take it for granted that television is not like reality. Students connect the formulaic aspects of legal dramas with unreality. In this way, the television narrative works in a negative sense, not defining what reality *is*, but instead what reality *is not*.

Interestingly, critical statements about the portrayal of reality within television production were so commonly made in the group discussions that students were asked to clarify how they were able to make such evaluations:

But how do you know what's real?

A: Good point.

B: I think it's just more common sense like all the shows — like, you go into a hospital and it's not always that someone's about to cark it then and there on that floor every single day of the week, so I think we draw from our own experiences and then — not in the legal field as such, but in other fields — and reproduce it on to other television shows and know that television's not exactly true.

A: And just from other things on television as well, scenes from *Armageddon* and all these other movies that are absolutely exaggerated, you know, you realise that anything that's on television, take it, tone it back a great deal and then you'll have something similar to reality. You know not to take everything seriously.²²

In this discussion, A and B reflect on their process of interpreting reality in the face of fictional representations. B argues that 'common sense' is used to determine that television must be over-dramatised. Just as they assume hospital dramas are exaggerated, so too must the law be. This student argues that they are drawing from their own experiences (not legal) to 'just know' that the television portrayals are not real. And, in likening the over-dramatising of the law to the unreality of Bruce Willis saving the world in *Armageddon*, participant A elaborates that, as seasoned viewers (of film and television), there is an innate expectation that anything on television *must* be watered down to get the 'real' picture. These students are adept at not taking television seriously and so, without legal experience or factual knowledge, they use this ability to articulate their constructed version of the reality.

At this point, while acknowledging the difficulties associated with identifying or even accessing the one 'truth' or 'reality' of lawyering, it becomes important to ask what the discursive resources are upon which students draw in order to make sense of competing notions of lawyering. In other words, if our students have a critical ability to evaluate television representations and make conclusions about reality, then what are the sources for this ability? Student B in the dialogue above refers to 'common sense' and experiences from 'other fields' as alternative sources of knowledge about the

²² FG 1, p 29.

world that is used to compare and access the true reality of lawyering. But what is this common sense or personal experience in various 'fields' if not simply another discursive construction of reality? Interestingly, the transnational project referred to earlier has indicated that personal experiences with lawyers, having family members or friends who are lawyers or having discussions at school are helpful sources to them in forming opinions about what lawyers are like and what they do. For our students, then, combining these sources to critique the representations of 'reality' on television involves the playing off of one construction or discourse over another. Students, drawing on their whole range of cultural competencies and experiences, are utilising the critical ability of questioning reality to evaluate television representations and identify what they believe to be the 'true picture' of lawyering. So, while acknowledging that reality is a discursive construction, this critical ability is to be encouraged in our students, as it develops their capacity for reflection on what it means to them to be a lawyer.

Identification of Themes

Students also exhibited substantial critical ability in their discernment of various themes inherent within the program narratives. One particular theme that seemed to be identified in all group discussions was that of the dichotomous legal world. According to student discussions, legal dramas only ever present two extremes of lawyering, with one pitted against the other. Although they will use different descriptions for each extreme, the students all argue that television represents the legal world divided into two spheres. On the one extreme, students identified the portrayal of lawyers who were economically driven, morally inept, but competent and successful; and on the other extreme, they described lawyers who — despite being possessed of high morals and altruistic desires — are quite often seen as incompetent or unsuccessful because they earn a pittance and/or their workloads demand that they spread themselves thinly across their clients.²³ Although I have discussed in a previous article²⁴ the students' desire to tread carefully between these two worlds — that is, desires towards altruism while achieving financial success and status — the focus here is on the students' critical articulation that television does not portray what they describe as 'the happy medium'. Take this comment, for example:

It's usually the one or the other — they're either the hard-nosed, hard lines, you know, just pains in the backside, or they're the nice people that love everyone and they're in the law for the community aspect of it

²³ Interestingly (and the subject of another article entirely), the students often described this dichotomy by referring to the contrasting images of the 'corporate' lawyer and the 'legal aid' lawyer.

²⁴ Sharp (2002).

rather than to make money, so you get both extremes but you don't seem to ... get a happy medium.²⁵

Students do not identify a middle ground in the types of lawyers presented on television. They argue that television only presents extremes:

Again, the thing is there's two different, like, strands, mostly they're really confident and, you know, like I said, they're really good speakers and everything else but if they wanted to show somebody who's a lawyer, who's not like that, they go right to the other extreme, so they're really incompetent or ... they just don't know what they're doing ... There's no middle ground again ...²⁶

By critically evaluating the theme of a divided legal world on the television screen, the students indicate that they are actually looking for the happy medium. Finding no middle ground on television, they transform this critical evaluation into an assumption that, as 'real' lawyers, they would fit somewhere between these two extremes. As one student argued: 'I suppose the lawyer that you're most likely to be like is that sort of a happy medium between the two extremes.'²⁷ Again, the students are coming to conclusions about 'real' lawyers by what is left undefined by television representations.

Another recurrent theme discussed by students was judicial discretion and how this leads to justice. In one discussion, this is referred to in the context of judicial decision-making as portrayed in the show *Judging Amy*. Utilising their understanding about this theme, the students critically evaluate issues of justice and discretion:

B: And, like, it's the way she deals with it as well, she provides what I — what *I would think to be, like, constructive resolutions*. Like, there was a guy who was in gangs and everything so she said to the parents, 'I'll keep him out of gaol if you guys move to another city, get him out of the gang culture, you know, put him into rehab', which is better than, like, sending your kid to gaol where it becomes more entrenched within them ...

C: Yeah, I like it because *she makes, can make up her own, like, punishments and stuff* (eg a girl who suicided) or something because they published, you know, horrible stuff about her on the Internet ... and her parents took these two girls to court and (Judge Amy says:) 'I'm not going to put you in goal but I will attach a transcript of this entire court thing to your academic record which will follow you all the way through college with this horrible thing you've done to this girl' and stuff like that — *she can just, like, make up her own justice to be done*.

B: I don't think it happens in real life.

²⁵ FG 1, B, pp 10–11.

²⁶ FG 1, E, p 12.

²⁷ FG 1, A, p 17.

C: Yeah, I know, but I wish it did.

In this show, the protagonist Judge Amy is seen by the students as being able to achieve altruistic goals by providing constructive resolutions to legal problems, and this is admired by the students because they see 'fairness' and justice being achieved. Interestingly, the students see what Judge Amy does as making up her own 'justice' and punishments. This perhaps reflects their lack of understanding of judicial discretion and lower court functions, but nevertheless is an aspect of her position and role that they use to articulate their position on justice. They are using the show to reflect critically on issues of discretion and justice but their lack of knowledge, experience and understanding leads them to have blurred assumptions about the function of courts and judicial discretion and to believe, as a result, that Judge Amy-type decisions wouldn't happen in real life. This is further shown in this continuation of the previous extract where they were encouraged to elaborate on the issue:

Why don't you think it happens in real life?

B: Oh, because, I mean, it's a whole foundation of precedent ... I mean, if you had people just going around willy-nilly going, 'Um, yeah, I'm, you know, wearing blue socks today so that means I'm going to lay down this punishment', I mean, you'd get a lot of unfairness in the legal system and I mean, whilst I think that a lot of what they do in Judging Amy is probably the best resolution, I don't think it's practical in a real life situation.

C: 'Cause that power that she has could be given to anyone who wouldn't use it as well as she does.²⁸

When asked why Judge Amy-type decisions wouldn't happen in reality, B's response is to refer to precedent as a vague reason against abuse of discretion, and to raise the point that wielding such power would lead to arbitrariness and unfairness. There is a confusion and contradiction here in the students' statements — they articulate *their* view of justice by identifying Amy's power as the best resolution, yet they believe that their view is not practical in a real-life situation. They evaluate that this is because Judge Amy is seen as fair and therefore presumably trustworthy with such discretion, but not everyone would utilise it as fairly. This is simply one example of the critical capacity our students are using to develop understandings of what legal concepts such as justice should involve.

Stereotypical Messaging

Students' critical abilities also extend to ascribing the production of message in the program. At times they overtly ascribe manipulative intent to the producers, and at others they evaluate the message itself to actively challenge

²⁸ FG 1, pp 18–19.

the portrayals. In one discussion, they refer to the stereotypical messaging employed by television producers to win audiences:

C: You rarely see a poor lawyer who's scraping to make ends meet. They're always rich, suave, dressed in suits ...

F: But then that's the stereotype ... so everyone thinks that, so that's where the lawyers get the bad name.

A: Mmm, and they're always ruthless and underhanded, well, not all of them, but a lot of them are ruthless and underhanded and *it's interesting now that there is this new trend where they're trying to show people who are a bit more real and a bit more noble and nicer* but up until recently, there was just really all these rich, suave, underhanded, ruthless lawyers who would do anything to win the case.²⁹

Here, the students challenge the message that law is about the rich and suave success stories by arguing that it is stereotypical and capable of cultivating negative images. One student continues with the argument that the stereotype is that lawyers are 'always' ruthless and underhanded, but makes the observation that there is a 'trend' among television producers to create a new type of lawyer identity: the nice, noble lawyer. Note that this trend is for lawyers who are a 'bit more real'. This is stated in conjunction with the characteristics of 'noble and nice', and juxtaposed against the attributes of underhanded, suave, rich and ruthless. One might question whether the descriptor 'real' can only be equated with the 'nice and noble', and perhaps is simply indicative of a continuation of the stereotyping by the students themselves.

In other discussions, the students refer to the need for television producers to strategically distance their portrayals from the traditional stereotypes in favour of likeable lawyers that the public will enjoy watching. One student says: 'I think they're trying to move away from the whole stereotype that the lawyers are just in it for the money because most people hate lawyers. So I guess if they want people to watch it then they have to change it.'³⁰ Here, the students are acknowledging the role of television in affecting public consciousness, including their own.

In other instances, the students identify gender stereotyping — specifically the portrayal of women lawyers as either emotional carers or as hardened butch types who have to prove themselves. Here the students are acknowledging the role of television in affecting public consciousness by perpetuating stereotypes. But it is interesting to note that, even though they raise the issue of stereotypical messaging as if they are actively challenging it, their discourse at times actually seems to limit their ability to see beyond the stereotypes. One student actually commented: 'But, like, television programs portray lawyers as one type of person and it's just ... it looks weird seeing a

²⁹ FG 1, pp 27–28.

³⁰ FG 1, D, p 28.

woman being that type of person.³¹ This would seem to suggest that, at least in the area of identifying stereotypes in the narrative, the students' critical ability is limited by their lack of experience, and they perhaps need assistance in utilising these abilities for challenging their positions and understandings.

Pragmatism

Students in first-year law also exhibit a substantial capacity for pragmatic criticism. This is awareness in the viewer of the 'ways in which the structure of the program captures and occupies their imagination'.³² Law students seem to be especially open to this ability. This is primarily because they are more likely to watch legal dramas for more than simple entertainment. They have a vested interest in being an active member of the audience as it has a direct correlation with their present and future reality.

Students frequently refer to the uses they make of viewing television dramas. They comment on how they use the legal shows to inform themselves about 'legal issues that are out there', to contemplate how they would deal with those issues and processes, and to provoke thought on the efficacy of the law in relation to various issues.³³ One student comments that the programs 'make it sound like what we're going to be doing is really exciting although one wonders just how true that is'.³⁴ Here, there is an implicit recognition that television has implications for their affective self and that, cognitively, it causes them to reflect on 'just how true' the portrayals are. Take, for example, this next exchange:

C: It's kind of more interesting now [watching legal dramas] because ... all the terms that I just used to, you know, let go past, it's like, 'Ooh, I know what that means now.

B: I tend to find myself arguing with them: 'You can't do that', you know. I suppose it's just trying to think about what they're actually ...

C: I find it's more interesting to watch the Australian law shows now because if they actually refer to some precedent, you can go, 'I've heard of that case' ... And now you sort of watch it and critically evaluate it.

E: ... now it's part of the learning.³⁵

Students utilise the television shows to test their understanding, to feel good about their learning and increased knowledge and to critically evaluate the issues presented. This is an interesting admission by the students who, as

³¹ FG 6, B, p 9.

³² Liebes and Katz (1989), p 216.

³³ Watching the US shows in particular, they acknowledge that it makes them question the consistency with Australian law and also provokes thought on the efficacy of the law in relation to various issues.

³⁴ FG 1, A, p 3.

³⁵ FG 1, pp 39–40.

earlier stated, often criticise the portrayals for their lack of authenticity — yet they still acknowledge that they use it for learning and evaluation.

Legal Education Implications

So what use can be made of these critical abilities? What implications does recognition of this capacity in our students have for legal education? It is clear that critical abilities can lead to self-reflection, awareness and challenging of one's perspectives. In this project, first-year law students indicated that, through discussions of television lawyers, they were able to take part in a type of self-reflection that they might not otherwise have the time or the inspiration to do. The argument is that we should not let these abilities go to waste, but instead harness them and encourage our students to utilise them towards experiencing self-awareness and identity construction within the larger legal community.

It is not a new argument that legal education should cater to this need of law students to have an outlet for self-reflection and development of intrinsic motivation. Webb argues that we should encourage this development of our students so that these abilities become reinforcing and self-sustaining.³⁶ According to Webb, an authentic, holistic legal education should also take seriously the importance of self-expression and articulation in learning³⁷ and 'acknowledge the role played by volitional and affective dimensions in shaping'³⁸ our students' professional development. Most would agree that it is in line with legal educative practices to create an environment where students are encouraged in the active challenging of self-perception, understandings and awareness of identity.

Of course, in the context of utilising law students' critical abilities, it is necessary to determine what learning objectives we employ within our degree program. Le Brun and Johnstone have argued that, in order to 'teach the whole person', we must involve students in learning experiences that engage three primary domains: the intellect or cognitive domain, the skills domain and the affective domain (which incorporates their emotions, values, attitudes and beliefs).³⁹ Generally, legal education places a high priority on the first two domains, but often the affective development of students is not as ardently pursued. However, in recognising that law students do possess these developing critical abilities, we can attempt to ensure that legal education does not allow them to remain idle.

There are many practical ways in which legal education can utilise, encourage and nurture students' critical abilities within the teaching environment. As this article had the objective of raising awareness of our student's critical abilities, a comprehensive model of practical methods to develop them is beyond its scope. However, some minor suggestions can be postulated for further thinking and development. At the course level, the

³⁶ Webb (2002), p 150.

³⁷ Webb (2002), p 150.

³⁸ Webb (2002), p 150.

³⁹ Le Brun and Johnstone (1994), p 158.

introduction of a critical 'law and popular culture' or 'law and film' subject/elective can be an attractive and interesting way for structuring the development of critical reflection skills in our students. Such courses have proven to be both popular and successful for many years in other jurisdictions. Greenfield and Osborn have been offering a successful first-year Film and the Law elective at the University of Westminster for many years, which they argue 'provides an early, welcome and accessible critical introduction to the study of law'.⁴⁰ Much has also been written and documented about the benefits of these types of courses in the United States, in which various institutions have recognised the benefits of these subjects since the 1970s.⁴¹ By introducing a critical jurisprudence at an early stage in the law program, students are empowered to develop their affective domain in conjunction with the intellect and skills domains that are so vigorously pursued in other subjects.

But instituting a whole subject on law and popular culture is only one method that could be employed to utilise our students' burgeoning critical abilities. Other methods may simply involve introducing into a subject (be it substantive or skill-based) various opportunities for students to question themselves and their understandings. One way this could be achieved is by showing clips from contemporary legal films or television dramas that deal with or provoke discussion about a particular issue relevant to the subject — for example, access to justice or judicial discretion,⁴² the presence of contractual intent,⁴³ or dilemmas of ethics and professionalism.⁴⁴ Another option would be to invite local practitioners into the classroom, allowing students to spend time in dialogue with them about pertinent issues and 'real' lawyering.

Whatever the method employed by the teacher, it is important to recognise that popular culture is the medium that saturates this generation of law students. Utilising the images of popular culture as points of discussion would enable them to approach the dialogue from a position of strength and confidence and possibly give them a desire to evaluate and question for themselves their passions, perceptions and values. Possibly without even realising it, by discussing pop cultural representations of the law, by engaging in legal education and simply by living their lives, students are critically negotiating their own process of legal identity construction and enhancing their own theoretical sophistication. It is exciting to think that legal education could have a stronger part in this development of our students' critical abilities.

⁴⁰ Greenfield and Osborn (1995), p 6.

⁴¹ Stone (2000); Osborn Jr (1990); Chase (1988).

⁴² For example, showing the film *A Time to Kill* or watching clips from *Judging Amy*.

⁴³ For example, in our contracts classes we have shown clips from a *Seinfeld* episode about the contractual intent exhibited by Elaine in unilaterally 'promising' a bike to Kramer.

⁴⁴ For example, discussing the many ethical dilemmas presented to the lawyers in *The Practice*.

Conclusion

Whether we like it or not, our students are saturated by popular culture and react naturally to the media of film and television. In discussing television lawyers, students have revealed their developing critical abilities. Offering our students the chance within legal education to articulate their perspectives about aspects of lawyering within a comfortable environment of peer evaluation, and enabling them to challenge themselves and each another, has substantial benefits. It is clear that popular culture (particularly film and television) can be used as a window to student perspectives and, further, can be utilised to empower students to explore and challenge the ideas and expectations that are important to them.⁴⁵ This will enable them to identify and evaluate their moral standpoint and biases and continue the construction of their legal identities. In this way, our task becomes less about changing the channel on their perspectives, and more about giving them the ability to fine-tune the picture.

References

- Michael Asimow, Steve Greenfield, Guillermo Jorge, Stephen Machura, Guy Osborn, Cassandra Sharp and Robert Sockloskie (2004) *Do First Year Law Students Think Lawyers are Sleazy? A Transnational Media Effects Study*. This report has yet to be published, but for a copy of the draft report, contact Michael Asimow at asimow@law.ucla.edu
- Chris Barker (2000) *Cultural Studies, Theory and Practice*, Sage.
- Anthony Chase (1988) 'On Teaching Law and Popular Culture' III *Focus on Law Studies* 1.
- Hans-Georg Gadamer (1977) *Philosophical Hermeneutics*, University of California Press.
- Steve Greenfield and Guy Osborn (1995) 'The Empowerment of Students: The Case for Popular Film in Legal Studies' 10 *Focus in Legal Studies* 6.
- Wolfgang Iser (1978) *The Act of Reading: A Theory of Aesthetic Response*, Routledge.
- Tamar Liebes and Elihu Katz (1989) 'On the Critical Abilities of Television Viewers', in Ellen Seiter et al (eds), *Remote Control: Television Audiences and Cultural Power*, Routledge.
- Tamar Liebes and Elihu Katz (1993) *The Export of Meaning: Cross Cultural Readings of Dallas*, Polity Press.
- David Morley (1992) *Television, Audiences and Cultural Studies*, Routledge.
- Marlene Le Brun and Richard Johnstone (1994) *The Quiet Revolution: Improving Student Learning in Law*, Law Book Company.
- John Jay Osborn Jr (1990) 'UFOs in the Law School Curriculum: The Popularity and Value of Law and Literature Courses' 14 *Legal Studies Forum* 53.
- Cassandra Sharp (2002) 'Scarlet Letter or Chastity Belt? What Legal Dramas of the Twenty-first Century are 'Telling' Law Students About a Career in Law' 5 *Legal Ethics* 90.
- Alan Stone (2000) 'Teaching Film at Harvard Law School' 24 *Legal Studies Forum* 573.
- Julian Webb (2002) 'Being a Lawyer/Being a Human Being' 5 *Legal Ethics* 130.

⁴⁵ Stone (2000), p 577.