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BECOMING A LAWYER: THE TRANSFORMATION OF STUDENT IDENTITY THROUGH STORIES

A thesis submitted in fulfilment of the requirements for
the award of the degree

DOCTOR OF PHILOSOPHY

from

UNIVERSITY OF WOLLONGONG

by

CASSANDRA ELIZABETH SHARP, BA LLB (HONS)

Faculty of Law

December 2006

ABSTRACT

To study law is to invite change. Not just change, but transformation. In the process of becoming lawyers, students interpret stories of law, transform meanings about law, and construct legal identity. Desperate to make sense of the world in which they will one day inhabit, first year law students draw on resources from two cultural realms: the legal and the social. In particular, they use popular stories as one resource to interpret what it means to be lawyer, and as a result students occupy a central place amid the intersection of law, society and fiction.

This thesis is concerned with the interpretation and transformation of meaning about law and lawyering within the social and academic context of law school. Of particular concern are the stories that are interpreted and produced *through* the medium of television and *within* the context of law school. This thesis does not engage with the familiar debate over the way in which law is represented in popular culture, rather it offers a new scholarly perspective on *how* students use these images. Specifically, this thesis examines the significance of stories in students' construction of identity. It does so by empirically analysing the 'talk' of focus groups. These groups were comprised of first year law students, and methodologically sought to address the use of stories within meaning-making processes and the construction of identity.

Drawing from the analysis of these groups, the thesis shows that first year law is a transformative moment in the students' identity construction; and that students use popular stories to interpret (and then retell) the ways in which they view a career in law. It further demonstrates that in their storied responses to popular culture students are grappling with notions of ethics and desperate to become ethically aware. The thesis concludes by arguing that student discussions reflect the imbrication of stories, ethics and identity, and for this reason, urges that stories be given explicit pedagogic value within the law school curriculum.

THESIS CERTIFICATION

CERTIFICATION

I, Cassandra Elizabeth Sharp, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Cassandra Elizabeth Sharp
15 December 2006

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Michael Andrews and Rachel Young have provided wonderful research assistance, especially in coding the transcripts, and I thank them for the diligence and care they took in their tasks.

As I have been blessed in the last three years with my beautiful children, Nathaniel and Caitlin, many friends and family have cared for them so that I might complete this thesis. In particular I thank the ever supportive Margaret and Wal; Jo and Brett for their warm hospitality; and good friend 'London buddy' Simone. I especially want to thank my parents Isabel and Bob, for not only their regular care of Nathaniel, but also their continual love, encouragement and confidence in me.

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DETAILS OF PRIOR PUBLICATIONS

Parts of this thesis are based on material that has been published. The details are as follows:

Chapters 2 and 7 – Sharp, Cassandra, 'The "Extreme Makeover" Effect of Law School: Students Being Transformed by Stories' (2005) 12 *Texas Wesleyan Law Review* 233.

Chapter 7 – Sharp, Cassandra, 'Changing the Channel: What to Do with the Critical Abilities of Law Students as Viewers?' (2004) 13(2) *Griffith Law Review* 185.

Chapter 6 – Sharp, Cassandra, 'Scarlet Letter or Chastity Belt? What Legal Dramas of the Twenty-first Century are "Telling" Law Students About a Career in Law' (2002) 5(1) *Legal Ethics* 90.

PART I

THE TRANSFORMATIVE POWER OF STORIES

CHAPTER 1

THE STORY BEGINS

I INTRODUCTION

Every year a fresh batch of students will embark on first year law – a journey of self-discovery, professional development and identity creation. As they become ensconced in law school, enrolling law students will draw on a wide range of resources (both legal and non-legal) to construct meaning about what it means to be a lawyer. One of these resources – popular culture – will be extremely familiar to most students. Despite an obvious public distaste for lawyers,¹ it appears that audiences have an insatiable desire for forms of popular culture that deal with the legal profession. Television programming and film development play on this fascination, with legal dramas being not only commonplace² but also a desired genre. In particular, as television has been described as the ‘central medium of cultural expression’³ it is probably the most substantial source of lawyer representation within popular culture.⁴

In fact in any given week on Australian television you can view at least seven specifically legal shows and several others that contain characters that are lawyers.⁵ During the time when this research was conducted a customary ‘fix’ of legal dramas for the week could involve tuning in to *Ally McBeal*, *The Practice*, *Boston Legal*, *JAG*, *Judging Amy*, *Ed*, two locally produced Australian dramas *Marshall Law* and *MDA*, and not one but three versions of *Law & Order*.⁶ As stories of law are a

¹ The frequency with which lawyers are the butt of jokes can attest to this.

² Steve Greenfield, Guy Osborn and Peter Robson, *Film and The Law* (2001) 86.

³ H Newcomb, ‘The Lawyer in the History of American Television - an Overview’ in D. Gunn (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1992) 39.

⁴ Indeed in Australia over the last ten years, there has been a resurgent injection of legal dramas into prime-time viewing as a direct response to a public appetite for shows depicting the law, lawyers and legal themes.

⁵ These usually include sitcoms that satirise lawyers (*The Simpsons* (FOX) 1989-present) or use the occupation to comedic effect (*Will & Grace* (NBC) 1998-2006).

⁶ *Ally McBeal* (FOX) aired from 1997-2002; *The Practice* (ABC) aired from 1997-2004, *Boston Legal* (ABC America) first aired in 2004; *JAG* (CBS) first aired in 1995 and is the longest running military

substantial part of today's popular culture, and students form an active part of that culture, it is argued that the exploration of student responses to these stories is an important part of understanding the way students perceive a career in law.

This thesis therefore considers the significance of stories in the first year student's construction of meaning about law. In particular, it centres on an empirical study using focus groups comprised of first year law students in order to explore the intersection between television fiction and student understandings. It is argued that students use television stories of lawyers to begin constructing legal identity, develop ethical awareness and to generate expectations of their future careers.

This chapter briefly outlines the structure by which the thesis will proceed. While Section II describes the objectives to which the thesis strives, Section III provides an explanation of how this research was conceived. The final section details the content of each subsequent chapter.

II THESIS OBJECTIVES

This thesis seeks to bridge an empirical gap in the existing scholarship.⁷ That is, unlike the abundant scholarship that has been produced in the area of media effects⁸ showing that public opinion is influenced by fictitious popular culture, evaluating public perception of the *law* through this medium has been minimally attempted. Although much has been discussed about the various ways in which law is depicted in visual media, very little empirical research has been utilised to explore the impact on actual audiences and their response to the law.⁹ Research into student uses of

drama in television history; *Judging Amy* (CBS) aired from 1999-2005; *Ed* (NBC) aired from 2000-2004; Australian dramas *Marshall Law* (Seven Network) aired for only one season in 2002, and *MDA* (ABC Australia) aired from 2002-2005; *Law & Order* (NBC) is the longest running crime series and is now in its 17th season and was first aired in 1990. The spinoffs *Law & Order: Special Victims Unit* and *Law & Order: Criminal Intent* first aired on the NBC in 1999 and 2001 respectively.

⁷ Chapter 2 will show that there is somewhat of a void in research about the connections between television representations and law student perceptions, particularly in the area of empirical research.

⁸ This is a very large disciplinary avenue and encompasses various methodological approaches and supportive theories. For a quick foray into this area, see Bryant and Zillman (eds), *Media Effects: Advances in Theory and Research* (2002).

⁹ For a recent exception, see Kimberlianne Podlas, 'The Tale That Television Tells.' (Paper presented at the Power of Stories: Intersections of Law, Culture and Literature, Gloucester, UK, 2005).

popular culture (in particular popular stories) and law is crucial to an understanding of the motivations, values and expectations of our law students. The more they can be understood, the better legal education can explore with them their constructions of legal identity.

It is important to indicate that this work does not attempt to provide a survey of the law as represented on television, nor does it critique the images, themes and stories presented within it. Rather, it seeks to provide new insight into student responses and uses of stories from television as one aspect of a legal education. In particular the research sought to address the following key objectives:

- to explore the use of stories within law students' meaning-making processes;
- to explore the development of identity within the broader framework of legal education;
- to connect this identity construction with ethical development; and
- to inspire legal education to encourage students towards an active awareness of each of these processes.

It was intended that the use of focus groups would be the primary vehicle for exploring the students' meaning-making processes. This would then make possible an investigation into the ways students construct identity through their reflective readings of television stories, and to the way student articulations lead to a transformation of meaning and awareness of self.

III PROJECT BEGINNINGS

The relationship between law and popular culture has invited great interest among scholars over the years. It is a field that invites the merging of disciplinary boundaries and allows for plurality in the ways that law can be understood. Viewing the relationship of law and popular culture from the vantage point of the first year law student was the initial reason for embarking on this research project. At that time I had only just begun an academic career in law, and was fascinated by the way my

first year law students were being transformed into ‘lawyers’ by their very existence at law school. To explore the representation and transformation of meaning about law and lawyering within the social and academic context of law school was to me an exciting prospect. In teaching these enthusiastic and idealistic novice law students week after week, I observed that the process of becoming a lawyer is a fascinating transitional phase in which students use *all* legal texts at their disposal (including ‘the law’ and popular legal stories) to make sense of the legal culture to which they are simultaneously contributing. I began to think then about the stories (both heard and produced) that were actually put to use in students’ legal education. It appeared to me that students interpret and produce stories *through* the medium of television and *within* the context of law school.

Subsequently, the research outlined in this thesis shows that popular legal stories do play an important part in constructing the first year law students’ understanding of what lawyers are like and what they do.¹⁰ It is argued that contemporary first year law students are accustomed to the nature of popular stories and thrive when given the opportunity to discuss issues raised by popular cultural texts. They are visually literate ‘story-addicts’ who are hungry for context,¹¹ and it is on this basis that two main assertions will be explored in this thesis: first, that law school places students on the cusp of personal and social transformation; and second, that law students utilise popular stories to transform understandings about the practice of law and, in so doing, develop (among other things) ethical awareness as an integral part of their identity construction.

¹⁰ This research is also supported by an international quantitative research project of which I was a part, that sought to compare what first year law students in different countries thought about the character of lawyers, and also 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 the various institutions: the United States (UCLA), England (Westminster), Scotland (Strathclyde), Germany (Bochum), Argentina (Buenos Aires) and Australia (Wollongong). See further in Chapter 2, Section IID. See also Michael Asimow et al, ‘Perceptions of Lawyers - a transnational study of student views on the image of law and lawyers’ (2005) 12(3) *International Journal of the Legal Profession* 407.

¹¹ Philip N Meyer, ‘Using Non-Fiction Films as Visual Texts in the First Year Criminal Law Course’ (2004) 25 *Vermont Law Review* 895, 897.

It was not that long ago, that without realising it, I myself stood on the cusp of transformation. I have fond recollections of studying law with the dream of becoming a lawyer like those on *Ally McBeal* and *The Practice*. In watching these shows I interpreted stories of law that portrayed society's most significant issues, conflicts and themes as well as abstract notions of love, honour, loyalty, and the human condition.¹² Once I began teaching first year students I discovered that they too were interpreting and evaluating television stories of law to help them decipher the various discourses of law they were experiencing. I found myself encouraging these enthusiastic high school graduates to be reflective about their responses to these stories and to be aware of the transformative process that their cultural self was undergoing.

This thesis demonstrates the interweaving of ideas, attitudes, beliefs and perceptions that occurs within the transitional stage of first year law, and argues that it is important to illuminate the potential that students have for developing 'subjective cultural storytelling voices'¹³. As first year law students assume their place within law school, they are 'discovering how to use stories effectively as tools for communication and rhetorical persuasion'¹⁴ and they begin an interesting process of identity construction and self-transformation. More than this however, the students taking part in this research indicated that stories (both heard and told) are a useful way to ethically deliberate on various issues. That is, in addition to showing that first year law students deploy stories to understand the world of law, it is argued that students also develop ethical awareness through their interpretation of stories, and that this is a significant aspect of their identity construction. In this way, the thesis builds towards presenting a triangular connection within students between stories, identity and ethics. It is argued that the first year law student exists within a wonderful sphere of transformation and possibility that is fascinating to explore.

¹² Newcomb, above n 3, 39.

¹³ Meyer, above n 11, 897.

¹⁴ Ibid 91.

IV STRUCTURE

In seeking to achieve the objectives described in Section II, the thesis moves progressively through an argument that students use stories to transform the self. The following overview is intended to provide a general outline of each chapter as a segment in that argument.

Chapter 2 provides the broad context for the research outlined in this thesis. In recognising that law and culture are utterly imbricated with each other, the chapter serves to contextualise this particular project within the broad landscape of law and popular culture. The first section explores the relevant literature in the field and argues that although legal scholarship does address law in film (and in a lesser amount television), there is a scarcity of research about the empirical connections between television representations and law students. The second section of the chapter thus locates the first year law student within a unique transitional position amid law, society and fiction and argues that the transformation process of first year provides a fascinating avenue through which to address the identified void in empirical research.

Within the research parameters defined in Chapter 2, Chapter 3 seeks to understand the meaning of culture in terms of its relationship with the law. This chapter has two major concerns: first, to examine the terms surrounding the concept of legal culture; and second to understand how students form and maintain legal identity within that relationship. Within this context, the chapter explores the notions of culture, legal culture and popular legal culture. It describes how throughout this thesis culture is viewed as a contested site of interaction within which individuals encounter and construct meanings, and that popular legal culture is a concept that should be seen as encompassing the production, transformation and exchange of meaning in relation to the law. Having provided this definitional basis, the chapter lastly delves into an exploration of the first year law student's transformative process and identity construction. It is the students' contribution to and exchange within legal culture via various forms of popular cultural representations that is the particular focus of this

thesis. Here it is argued that the interweaving of ideas, attitudes, beliefs and perceptions within the transformative process of first year law is a part of the students' construction of legal identity.

With a focus therefore on the meanings that are created among first year students about law and the identity that students are constructing, Chapters 4 and 5 provide explanations of the methods and methodologies that underpin the analysis presented in Part Two. In Chapter 4, the assumptions of a qualitative approach to exploring student perceptions are described. Drawing from cultural studies, the chapter outlines the active audience paradigm that forms the theoretical basis for the analysis. Viewing student discussions as a site for the active construction of meaning, the chapter discusses the use of focus groups in the research. In particular, it outlines the use of a pilot study to ascertain that focus groups were the most appropriate method for exploring student transformation and identity. From this discussion, the chapter lastly moves to an explanation of the logistics of the study.

Acting as a preface for the discussion of analysis in Part II, Chapter 5 describes the specific methods employed to code and interpret the students' talk. Here it is argued that an interpretive application of coding strategies and a more focussed critical discourse analysis enables the 'talk' of the students to be explored as a discursive construction. In particular it is posited that as active viewers, law students show distinct patterns of involvement with television programs primarily within the referential and critical realms.¹⁵ Drawing from the methods discussed in Chapters 4 and 5, the analysis in Part II thus explores and discusses the students' referential and critical use of television to construct meaning about lawyering.

The analysis in Chapter 6 particularly concentrates on the students' referential use of television stories. It describes and highlights how students use stories as a referent to future desires, construction of identity, and ethical development. To that end, the chapter illustrates the ways in which students articulate aspirations, expectations, altruism and ethics through discussions about television lawyers. It is argued that as

¹⁵ See Chapter 5 for an explanation of this analytic classification, and also Tamar Liebes and Elihu Katz, *The Export of Meaning: Cross-Cultural Readings of Dallas* (1993).

one aspect of identity construction, students use the articulation of their position to polarise the way they see ethical actions.

In Chapter 7, the students' critical use of television stories is the focus, and it is shown that their discussions are reflective of their nascent abilities of critique and reflection. Here the subtle ways in which the students use the television narratives to individually approach and understand lawyering practices are exposed, and it is argued that through the process of articulating their responses students actually reveal their significant capacity for critical reflection and analysis of their position. The chapter first examines the students' constant criticism of mimesis in the programs and moves secondly to their identification of the theme and messaging within the narrative. The chapter lastly canvasses the significant pragmatic awareness of our students and suggests that their active use of the television narratives contributes to a transformation of self.

Having presented in Part II analysis that demonstrates the students' utilisation of popular stories in their educational and personal development, Part III explores the implications for legal education of this use of stories in students' transformation. Chapter 8 examines the way in which students are constructing identity and ethically deliberating through storytelling. The chapter first provides definitional clarity over the terms 'ethics' and 'morality'. The former is seen as constitutive of identity and as a basis upon which to articulate and justify ethical decision-making. This is contrasted with the latter, which is recognised as the cultural marking out of moral discourses. Using this demarcation of terms, the chapter argues that first year law students are participating in an ongoing process of ethical development that is strongly imbricated in identity construction. The chapter posits that students should be encouraged towards awareness of their ethical and identity construction, and concludes by commenting on how the students' talk reflects the triangular connection between stories, ethics and identity.

Chapter 9 then explores specific ways in which legal education can address the transformative process of first year law through a concentration on stories. The chapter strongly argues for an acknowledgment that developing ethical awareness is

indispensable to the students' transformative journey. In particular, the chapter focuses on the role of ethics in the students' continuing narrative of self. That is, the chapter explores the implications for legal education in recognising the use of stories in ethical awareness and identity construction. The chapter argues that the broader processes at work in legal education and student identity development must be appreciated, and therefore commends methods for capitalising on the process of student identity transformation as revealed in this research.

This research seeks to contribute to a larger intellectual movement that understands law from a cultural perspective. Within that context, it is extremely important for legal education to recognise that this generation of law students are saturated by stories. Chapter 10 thus brings the thesis to a close by arguing that stories are an extremely powerful resource for students in the process of transformation and identity construction. In particular it shows how the main assertions of the thesis have been demonstrated. That is, Chapter 10 concludes that the research as presented in this thesis shows that first year law students are in a great stage of transformation, and that as part of this process they actively use stories to understand law and lawyering from an ethical perspective. It is the argument of this thesis that through such a transformative process students may be able to gain a better awareness of their perpetual construction of identity.

CHAPTER 2

LOCATING LAW STORIES WITHIN POPULAR IMAGINATION: LAW, TELEVISION AND THE LAW STUDENT

I INTRODUCTION

The intersection of law and popular culture is an expanding research interest. With diversity and plurality, this interdisciplinary field invites the exploration of law as it is conceived and portrayed within various cultural forms. Increasingly scholars are looking beyond traditional legal narratives to better understand the various ways in which law is understood and perceived by the general public. This has meant that greater attention has been paid to stories of law as told in popular culture, with many scholars researching film, television, media and literature in order to say something meaningful about the way people respond to the law. Over the years these scholars have examined the way in which ‘a popular understanding of the law and lawyers is constituted by interpretive references and devices employed in the communicative mediums of television, film and literature’.¹ This has been done for example, by making a serious study of the way trials are portrayed in film, or by evaluating the portrayal of female lawyers on television.

The research presented in this thesis, although situated within this expanding scholarship of law and popular culture, goes one step further by examining the audience rather than just the text. That is, it explores the role of television in the perceptions of law students as they begin to comprehend and interpret the world of legal practice. Of particular concern are the ways in which first year students use popular legal narratives to produce their own stories, not only to articulate and

¹ Robin Paul Malloy, 'Symposium on the Images of Law(yers) in Popular Culture: Introduction' (2003) 53(Fall) *Syracuse Law Review* 1161, 1162-3.

describe their current aspirations and expectations of a career in law, but also to interpret and construct ethical awareness and legal identity.²

This chapter serves two important functions in understanding the intersection of law and culture within the popular understanding of the law student: first, it illuminates the broad landscape within which a study of law and popular culture is based; and second, it contextualises this particular project within that landscape. In Section II, through an exploration of the relevant literature in this field, the chapter argues that although legal scholars have had much to say about various aspects of the portrayal of law in film (and in a lesser amount television), there is somewhat of a void in empirical research about the connections between television representations and law student interpretations. In recognising this gap, Section III locates the first year law student within a unique transitional position amid law, society and fiction. It is argued that by virtue of this position students are in a remarkable stage of transformation, and therefore form quite a fascinating aggregate through which to study the construction of legal identity and ethical development.

II LANDSCAPE OF LAW AND POPULAR CULTURE

Beginning with an outline of the law and literature movement over the last two decades, this section examines the most recent academic legal scholarship that focuses on law as represented in popular culture, particularly film and television. As recent years have shown an exponential rise in the body of legal scholarship on law and popular culture, this section continues by looking at some of the articles, books and interdisciplinary projects that concentrate on the portrayal of lawyers in the visual media. After briefly delving into the cinematic attraction of law, this section then explores the research in law and television, and points to the relevance of this thesis as a contribution to the scholarship in this area.

² For an exploration of their expectations and aspirations see Chapter 6; for a discussion on the students' construction of ethics and identity see Chapter 8.

A The Law and Literature Movement

While a study of popular culture is an established area of academic analysis for most humanities disciplines, the intersection of law and popular culture has not been so easily accepted. Greenfield, Osborn and Robson argue that one reason for this is the hegemony of the black letter tradition, which depends on an identified and applied body of rules and resists a contextual or critical approach to the law.³ The emergence of the law and literature movement over twenty years ago began what can now be seen as ‘a shift towards a more contextual approach’⁴ to the study of law. This movement arose out of a need to promote an interdisciplinary expansion of legal scholarship and pedagogy, and to call into question the nature of law as an autonomous discipline.⁵ As Dunlop argued in his early exploration of the movement:

Legal scholarship can and should include studies of works of literature dealing with law. Fiction may not be particularly helpful as a way to learn legal rules or history, but it can tell us much about law, defined broadly to mean the legal order...The assumption of traditional legal education, that law is a technical and insular matter grasped entirely or largely on its own, has been replaced by the belief that it is inextricably bound up with politics, morality, culture, and life ... The center of legal scholarship will always be law, but scholars should approach it as a part of a broader civilisation.⁶

Credit is given to White for placing this approach to law and literature on the map of interdisciplinary study, and for introducing a rich variety of associations between the legal and the cultural in order to explicate constructs of law and lawyering. White’s early work⁷ explored the diverse connections between law and culture drawing on

³ Steve Greenfield, Guy Osborn and Peter Robson, *Film and The Law* (2001) 2-3.

⁴ Ibid 3.

⁵ D Black, *Law in Film: Resonance and Representation* (1999) 110; Margaret Thornton, *Romancing the Tomes: Popular Culture, Law and Feminism* (2002) 10. See also further discussion in Chapter 3 Section II regarding the challenge to law’s autonomy through discourse.

⁶ C R B Dunlop, 'Literature Studies in Law Schools' (1991) 3 *Cardozo Studies in Law and Literature* 63, 69.

⁷ James Boyd White, *The Legal Imagination* (1985) and James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (1985).

elements of case law, language, philosophy and rhetoric; and especially claimed that legal education should incorporate a study of literature.⁸

It was following this pioneering scholarship that a distinct movement of law and literature emerged.⁹ This movement was then broadly understood as serving two main goals: first, to utilise methods from literary theory and narrative analysis to view legal texts as forms of literature¹⁰ (law as literature); and second, to study representations of the law in literary texts (law in literature). 'Law as literature' has its focus on the study of rhetoric in the law, and views law as 'both a language with a particular vocabulary and grammar as well as a composition constituted by various media, shaped by many tools, and composed of diverse formal qualities'.¹¹ 'Law in literature' on the other hand seeks to analyse representations of law in fictional works in order to evaluate the manner in which law is portrayed, and asks what they tell us about how the law is popularly imagined. It is argued that despite having distinct approaches, together these aspects of the law and literature movement have an educative ambition;¹² that is, it can effect curricular change through raising questions about the autonomy and insularity of law and legal education.

Whether it is a matter of taking fictional representations seriously as sources of ideas about the law or of treating legal discourses as stories...[both] approaches have the effect of taking the law down a notch, in terms of its authority and the putative absolute meaning of its texts.¹³

This potential for corroding the authority and autonomy of the law is the reason Thornton gives for the law's resistance to the various forms of popular culture. She argues that while law's self-referentialism would prefer popular culture to be

⁸ See particularly James Boyd White, *The Legal Imagination* (1985).

⁹ Weisberg was also influential in this field – see Richard H Weisberg, *The Failure of the Word: The Protagonist as Lawyer in Modern Fiction* (1984); Richard H Weisberg, *When Words Lose Their Meaning* (1987); Richard H Weisberg, 'Coming of Age Some More: "Law and Literature" Beyond the Cradle' (1988) 13 *Nova Law Review* 107.

¹⁰ 'The assumption was that the problems of determining the meaning of a text were essentially the same whether the text was a literary text, religious text, or a legal text': Timothy O Lenz, *Changing Images of Law in Film and Television Crime Stories* (2003) 10.

¹¹ Jessica M Silbey, 'What We Do When We Do Law and Popular Culture: Richard Sherwin. When Law Goes Pop.' (2002) 27(Winter) *Law and Social Inquiry* 139, 142.

¹² Ian Ward, 'The Educative Ambition of Law and Literature' (1993) 13(November) *Legal Studies* 323.

¹³ Black, above n 5, 112.

‘consciously confined to the margins of orthodox legal knowledge by technocratic legal methods’, the symbiotic relationship between law and culture makes it difficult.¹⁴ On this basis, the law and literature movement, which sought to ‘conceptualise law as a social science and/or humanity, as well as ... address law in its social context’ can be seen to have the effect of destabilising the myth of the autonomy of law.¹⁵

In questioning the absolute nature of law, the law and literature movement advocated the interdisciplinary utility of textual interpretation and many scholars became convinced that it was worthwhile to explore the congruous elements of law and literature because of their common ties with culture. This quickly ‘stimulated the study of legal institutions, legal discourse and representations of law as legitimate aspects of cultural studies’¹⁶ and led scholars to make use of all forms of popular culture as a means of exploring less orthodox jurisprudential and philosophical concepts. Thornton argues that viewing the law as culture from within this perspective acknowledges the postmodern critique of law as a universalising and authoritative discourse and engenders reflexive and theoretical possibilities that were long resisted by traditional legal methodologies:

The critical gaze is not restricted to the conventional hierarchical focus on legislatures and appellate courts, but includes the full range of ‘non-authoritative’ discourses about law, including literary texts and popular media.¹⁷

The law and literature movement has grown then to incorporate the study of law and popular culture, which approaches the study of law in a less legalistic and more culturally contextual manner. In this way, a study of law and popular culture recognises that both fields are rich narrative regimes through which storytelling is

¹⁴ Thornton, above n 5, 3-4.

¹⁵ Ibid 15.

¹⁶ Ibid 5.

¹⁷ Ibid 5-6.

used to help make sense of the world.¹⁸ Attracting a variety of scholars from film studies, literary theory, cultural studies, sociology and law, the multidisciplinary nature of such an enterprise enriches the research quantum by enabling points of difference to be rigorously debated. The remainder of this section is therefore divided so that two important groups of scholarship will be critically surveyed. The first engages with general discussions about the imbrication of law and popular culture, specifically interacting with the recent work produced by Sherwin. The second group traces the progression of contemporary law and film scholarship and provides a comparison with what is the major concern of this particular project: the interface between law and television within student identity.

B The Exploration of Law and Popular Culture Generally

With the attraction of providing a more contextual approach to various aspects of law, explorations into this field have been quite diverse, and are certainly not limited to the more commonplace arenas of literature and film or television. Forays have been made into the representation of law in novels,¹⁹ reality television,²⁰ theatre productions²¹ and songs.²² Most recently, Richmond has pushed the boundaries even further to discuss the relationship between the law and non-verbal arts, including instrumental music and dance.²³ Work in this diverse and seemingly amorphous field

¹⁸ It is argued in later chapters that discourse and narrative are deployed by first year law students to make sense of the world of lawyering. They are using the discursive resources of both law and popular culture to conceive of law and construct legal identity.

¹⁹ For example scholarship on the novels of John Grisham: Jefffrey L Harrison and Sarah E Wilson, 'Law and Literature: A Collection of Essays on John Grisham's The Rainmaker: Advocacy in Literature: Storytelling, Judicial Opinions, and the Rainmaker' (1996) 26(Summer) *University of Memphis Law Review* 1285; J Owens, 'Grisham's Legal Tales: A Moral Compass for the Young Lawyer' (2001) 48 *UCLA Law Review* 1431.

²⁰ David a Harris, 'The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System' (1993) 35 *Arizona Law Review* 785; Kimberlianne Podlas, 'As Seen On TV: The Normative Influence of Syndi-Court On Contemporary American Litigiousness' (2004) 11 *Villanova Sports & Entertainment Law Journal* 1.

²¹ Whaley, 'Gilbert and Sullivan at law' in David L Gunn (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1993) .

²² For articles focused on law and music see: 'Symposium: The Modes of Law: Music and Legal Theory, An Interdisciplinary Workshop' (1999) 20 *Cardozo Law Review* 1325; Jennifer Jaff, 'Law and Lawyer in Pop Music: A Reason for Self-Reflection' (1985-1986) 40 *University of Miami Law Review* 659.

²³ Michael L Richmond, 'Law, Instrumental Music, and Dance: Reflections of a Common Culture' (2003) 27 *The Legal Studies Forum* 783. See also Desmond Manderson, *Songs Without Music: Aesthetic Dimensions of Law and Justice* (2000).

is largely connected by a desire to explore the meaning and representation of law within a variety of cultural contexts, and as a body of scholarship it describes the site of a complex encounter between contemporary culture and law.

In the late 1980s two scholars created the main impetus for others to delve into this field. Chase argued in 1986 for a legal theory of popular culture²⁴ and reviewed the portrayals of American attorneys in mass media;²⁵ and Friedman, in his oft-cited 1989 work, argued that law and popular culture operate symbiotically. Friedman argued that in order to understand law in this society it is desirable to view culture as an important witness and source of legal culture.²⁶ Following Chase and Friedman (coupled with a substantial increase of law being presented on television and film) there seemed to be an explosion of scholarship in this area, particularly focusing on representations of law and its operation within fictional media.²⁷ Existing within a framework 'which perceives that popular culture is an important source of the public's knowledge of legal rules and the justice system',²⁸ a majority of the work over the last ten years has analysed the portrayal of law and lawyering in a wide variety of fictional forms to illuminate social aspects of the law and public perception of it. An example of early work along these lines is the collection of essays edited by Gunn,²⁹ which addresses themes of law in books, television, operettas and in genres such as western movies, and evaluates the implications of such portrayals for the legal profession generally. Later works such as Denvir's *Legal Realism*,³⁰ Greenfield,

²⁴ Anthony Chase, 'Toward a Legal Theory of Popular Culture' (1986) 1986 *Wisconsin Law Review* 527.

²⁵ Anthony Chase, 'Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys' (1986) 11(2) *American Bar Foundation Research Journal* 281.

²⁶ Lawrence M Friedman, 'Law, Lawyers, and Popular Culture' (1989) 98 *Yale Law Journal* 1579.

²⁷ See generally James R Elkins, 'Reading/Teaching Lawyer Films' (2004) 28(Summer) *Vermont Law Review* 813; Michael Asimow and Shannon Mader, *Popular Culture: A Course Book* (2004); Malloy, above n 1; Silbey, above n 11; Richard Sherwin, 'When Law Goes Pop' (2002) 27 *Law and Social Inquiry* 139; Lisa Scottoline, 'Law and Popular Culture: Get Off the Screen' (2000) 24 *Nova Law Review* 655; John Denvir, 'Law, Lawyers, Film and Television' (2000) 24 *Legal Studies Forum* 279; Chris Jackson, 'Film and TV Legal Drama Commentary' (2000) 24 *Legal Studies Forum* 321; Brett Kitei, 'The Mass Appeal of the Practice and Ally McBeal: An In-Depth Analysis of the Impact of These Television Shows on the Public's Perception of Attorneys' (1999) 7 *UCLA Entertainment Law Review* 169; Ronald D Rotunda, 'The Legal Profession and the Public Image of Lawyers' (1998/1999) 23 *The Journal of the Legal Profession* 51; Friedman, above n 26; Stewart Macaulay, 'Popular Legal Culture: An Introduction' (1989) 98 *Yale Law Journal* 1545.

²⁸ Greenfield, Osborn and Robson, above n 3, 11.

²⁹ David L Gunn (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1993).

³⁰ John Denvir (ed), *Legal Realism: Movies as Legal Texts* (1996).

Osborn and Robson's *Film and the Law*³¹ and Lenz' *Changing Images of law in Film and Television Crime Stories*³² have all contributed to the wider promotion of law and popular culture as a useful scholarly discipline.

Interestingly, one particular motivation for scholars within this area is the argument that popular culture reflects public opinion, and therefore its study can find a function in pointing to perceptions of the law among the general public. Most legal scholars working in this field have argued that public opinions and attitudes toward the law are often mirrored in film and television representations.³³ This is based on the premise that the entertainment business thrives on producing that which is popular and meeting audience demands. The legal scholar therefore should be interested in the way the law is represented in popular stories because it is a reflection of what the public thinks about the law. Yet, the idea that popular culture mirrors public opinion is much more complex than the notion of 'reflection' implies.³⁴ It is argued that popular culture plays an important part in creating demand for certain types of programs and thereby shapes and moulds popular understandings and attitudes about law.³⁵

It is no longer controversial to argue that the media influences people³⁶ or to acknowledge that popular understandings are shaped and transformed by the legal stories being told in the visual media. This thesis therefore proceeds on the footing that, rather than simply influencing viewers, popular culture allows for active audiences to transform and produce understandings and attitudes through the images they watch. Since this methodological position will be discussed in Chapter 4, for now it is sufficient to note that a symbiotic relationship exists between law and popular culture and that the two are not 'disjunctive, despite the best endeavours of legal traditionalists to present them as such'.³⁷ Studying popular culture and its

³¹ Greenfield, Osborn and Robson, above n 3.

³² Lenz, above n 10.

³³ See, for example, *ibid* 12; Thornton, above n 5, 4; Friedman, above n 26.

³⁴ The 'reflection' of popular opinion is surely a construct – who is it that determines what that 'reflection' is, in order to be mirrored in popular culture. Perhaps it would be better to argue that popular opinion is often mediated through popular culture.

³⁵ Lenz, above n 10, 12.

³⁶ *Ibid* 13.

³⁷ Thornton, above n 5, 4.

interaction with audiences can therefore have a very effective utility for grappling with popular understandings about the meanings of law, politics and morality.

In recent times, two significant contributions to this interdisciplinary field have particularly acknowledged this utility, and are sufficiently critically engaging to stimulate further research: *Law's Moving Image*,³⁸ edited by Moran et al; and *Romancing the Tomes*,³⁹ edited by Thornton. The authors in the first collection draw extensively from social and cultural theory as well as film critique in order to examine the impact of 'the moving image and its aesthetic effects upon perceptions and experiences of law and order' and cultural politics.⁴⁰ It has particularly inspired this thesis by encouraging multidisciplinary in researching the complex relationship between law and the moving image. In challenging the traditional orthodoxies of legal scholarship involving film, the authors encourage the engagement and incorporation of related disciplinary insights into an analysis of law and popular culture. Equally, the collection edited by Thornton showcases debates about the social phenomena of law and legal texts utilising a wide range of postmodern and feminist analysis. Thornton argues that while there is no reticence about the way law inspires so much fictional media, there is still much denial about 'the significance of popular culture in creating and interpreting law',⁴¹ and her collection thus seeks to explore the ways 'popular representations of law feed back into legal discourses and shape contemporary understandings of law'.⁴² In following such an example, this thesis explores the way public attitudes about law are actively mediated through the constructs of popular culture and, as will be discussed in Chapter 4, utilises interdisciplinary methodologies to achieve it.

1 *A Postmodern Consequence of Law and Popular Culture*

Challenging the common traditions of the law and popular culture movement was also on the agenda for Redhead in his book *Unpopular Culture: Birth of law and*

³⁸ Leslie J Moran et al (eds), *Law's Moving Image* (2004).

³⁹ Thornton, above n 5.

⁴⁰ Moran et al (eds), above n 38, xiii.

⁴¹ Thornton, above n 5, xiii.

⁴² Ibid xiii.

popular culture,⁴³ which presents a theoretical approach to postmodernism within a popular cultural study of law. In it he attempts to describe a (hi)story of 'law and popular culture' as a discipline and to map the existing path that this area is following. Redhead's primary concern is with the deconstruction of the regulatory discourses and practices within law and popular culture, and the aestheticisation and sexualisation of everyday life and law within the context of legal theory, deviance and cultural studies.⁴⁴ He also places an underlying emphasis on the narrativity of a law and popular cultural enquiry. That is, by questioning as a myth the authority and static nature of law, his law and popular cultural enquiry allows for the exploration of the diverse languages of law within a narrative setting.

In seeking to (de)construct the terms, contours and narrative structures of law and popular culture, Redhead postulates that law as a discipline 'is inherently unstable, placed as it is at an intersection of other discourses and practices'⁴⁵ including sociology, jurisprudence and cultural studies. He argues that an enquiry into popular cultural studies provides one way of challenging conventional jurisprudential theory by exposing the myth that the law is a 'given'.⁴⁶ This thesis too proceeds on the basis that language is a site of law and like Redhead, rejects the notion that law is something easily delineated.

In *When Law goes Pop*⁴⁷ Sherwin also spends considerable time explaining the problematic nature of the relationship between law and popular culture and questions whether popular cultural products have adverse effects on the law and legal practice. He makes clear 'the extent to which law today is converging with the popular, and the

⁴³ S Redhead, *Unpopular Culture: the birth of law and popular culture* (1995).

⁴⁴ Ibid 4-5.

⁴⁵ Ibid 5.

⁴⁶ Ibid 10. Within this context, his position is that the law (or in his terms, the rule of law or the legal subject) is fast disappearing into the realm of popular culture. But, is it really a tragic postmodern consequence that the law is disappearing into popular culture or that the boundaries between law and popular culture are dissolving? We might question at this point why it is seen as a negative consequence that the boundaries between law and popular culture are dissolving in such a way? Certainly, some scholars speak of boundaries as an unnecessary constraint on interdisciplinary researchers. See Jerry Leonard, *Legal Studies as Cultural Studies: A Reader in (Post)Modern Critical Theory* (1995); James Boyd White, 'Acts of Hope: Creating Authority in Literature, Law and Politics' (1994) See also Linda Myrsiades, 'Legal Studies as Cultural Studies: A Reader in (Post)modern Critical Theory (Book review)' (1996) 23(1) *College Literature* 204.

⁴⁷ Richard Sherwin, *When the Law goes Pop: The Vanishing Line Between Law and Popular Culture* (2000).

deleterious effects of this convergence on law's stability and continuing legitimacy in the eyes of the public'.⁴⁸ However, unlike Redhead who discusses the disappearance of the law into popular culture as a backdrop to exploring the fragmented boundaries of these two areas, Sherwin presents an almost apocalyptic account of the merger. He argues that the law is succumbing to the various influences of mass media and suggests that the law 'goes pop' when the legitimacy of the law is eroded. This occurs, he suggests, when law and popular culture intermingle.⁴⁹

This is what we see when techniques of mass communication fold disparate meaning-making practices into the homogenous stories and images of popular culture. It is what happens when the active, off screen dimension of lived experience and the varieties of common sense that it produces give way to the passive, self-gratification-enhancing, and image-based logic of commercial media. Then, the capacity for critical judgment – of external reality, of self and others, of truth and justice in the individual case, and of the media themselves – is significantly undercut. We witness a similar institutional breakdown when the judiciary, in an effort to enhance its legitimacy, converges on the same set of images as the mass media. When that happens the courts' countermajoritarian function also breaks down. For then the courts too have internalised the image-based logic of popular culture.⁵⁰

It is this flattening of legal meaning, and distortion of legal knowledge that leads Sherwin to view law as in need of rescue from the negative effects of our postmodern culture, which include 'the increasing conflation of truth and fiction; the image based manipulation of irrational desire, prejudice, and popular passions; and the concerted effort to deliberately construct preferred versions of (and judgments about) self and social reality'.⁵¹ In taking this position, Sherwin refers to a notion of postmodernism that rejects rigid distinctions, emphasises irony and favours ambiguity. His warning that law's legitimacy is being diminished is based on a postmodern view that the continual overloading of images in contemporary culture dissolves any distinction between art and reality. In dealing head on with what he views as the volatile postmodern effects of a mixed law and popular culture, Sherwin identifies several

⁴⁸ Ibid 7.

⁴⁹ Ibid 5.

⁵⁰ Ibid.

⁵¹ Ibid 7. He terms these negative effects 'radical scepticism' and argues that they involve a 'wholesale repudiation of reason and the efficacy of human will': at 235.

issues that should be addressed in order to protect the efficacy of the law and proposes a method for keeping law free from the influences of popular culture. This method, which he describes as ‘tragic constructivism’ or ‘affirmative postmodernism’, seeks to acknowledge the effects that visual representation has on society in order to create a sensitivity to the postmodern effects of popular cultural forms.⁵² Yet, as others have noted, Sherwin does not adequately describe how this is to be achieved, nor does he deliver on the promise to offer an alternative to the consequences of postmodernism he has outlined.⁵³

While it is entirely appropriate and stimulating for Sherwin to be exploring some difficult questions about the influence of popular culture on our meaningful understanding of law, it is important to note that the postmodernism he eschews (through which he argues the ‘truth’ of the law is placed into question) may actually provide positive ways in which to empower individuals towards a questioning and a demystification of the mythic significance of the law. Indeed it is in Sherwin’s admission that ‘[c]ertain unrealistic aspirations and repressive tendencies in the immoderately rationalist culture of modernity are now undergoing an important and necessary corrective’⁵⁴ that we see how the consequences of postmodernism may not be as tragic to the law as his ominous treatise would have us believe. It is argued that through postmodern forms of analysis we can recognise and explore our engagement within the law and popular culture mixture. In the context of this research, a postmodern approach that favours reflexivity and self-consciousness will enable the law student’s transformation of meaning and experience to be harnessed. Although Sherwin presents a cautionary tale about law’s deligitimation and public disenchantment, this research shows that the convergence of popular culture and law can actually be used to cultivate in law students a more critical reflection about the images and narratives they encounter. Within this context, the following discussion

⁵² Ibid 9. According to Sherwin this practically means training, for example, juries and lawyers to ask respectively ‘what reality will my judgment call into being?’ and how can I ‘create a just representation of the human actions that lie at the heart of the legal controversy at issue?’: at 213, 237; Silbey, above n 11, 144.

⁵³ James R Elkins, ‘A Law Culture Diagnostic’ (2001) 8(1) *Journal of Criminal Justice and Popular Culture* 48, 51; Silbey suggests that his analysis of this interdisciplinary field is still a ‘nascent hypothesis’: Silbey, above n 11, 158, 166.

⁵⁴ Sherwin, above n 47, 7.

describes how this research addresses two major criticisms of Sherwin's theoretical framework and in the growing law and popular culture scholarship more generally.

2 Avoiding the Pitfalls of a Law and Popular Culture Enquiry

In her review of Sherwin's work, Silbey spends considerable time urging law and popular culture scholars to avoid certain pitfalls that are inherent within an interdisciplinary study. Of particular relevance to this research are two charges. The first requires a clear demarcation of terms and concepts such as 'the law' and 'culture', which, although seemingly straightforward, Silbey argues is rarely made in this interdisciplinary field.⁵⁵ By designating these subjects more clearly the scholar is able to circumscribe the inquiries and attain clarity in analysis.⁵⁶

Sherwin's particular lack of demarcation within such an overlap of cultural constructs and discursive practices is certainly detracts from his argument that law's stability and legitimacy is fast being diminished by a postmodern, popular cultural world. It is therefore a lesson to be minded in this particular project. Chapter 3 thus serves to designate clearly the conceptions of law and culture on which this research proceeds.

Although Silbey's second charge again seems obvious, it is an easy trap for interdisciplinary scholars to fall into: to not neglect the 'tenets of the disciplines we are marrying'.⁵⁷ This warning addresses the difficulty law scholars often face when utilising developed paradigms and assumptions of literary studies, film criticism or cultural studies. In Sherwin's work his position relies on the assumption that there is a difference between the truth as sought in the courtroom, and truth as represented in fiction – one is reality and the other is fantasy. Yet, this position does not take into account decades of study in language and discourse, which counter the assumption that facts can exist outside of discourse or ideology:

⁵⁵ Silbey, above n 11, 145.

⁵⁶ On this charge, Silbey argues that Sherwin is 'not clear about the object he is investigating as law when he claims that it is going pop...we are left not knowing whether the law that goes pop is formal doctrinal positive law, that doctrine plus institutions and its official acts and discourses, unofficial practices of legal actors, or popular legal consciousness as well'. See Silbey, above n 11, 149.

⁵⁷ Ibid 145.

Instead of empirically exploring the effect on verdicts of postmodern storytelling that rely on fantastical narratives, Sherwin assumes that fantastical narratives are inherently corruptive of the legal process because they lack the capacity for 'truth'. This assumes that legal discourse can reveal the truth while narrative can only describe it.⁵⁸

It is a failure to attend to the basics of each discipline's methodological procedures that Silbey argues has caused Sherwin 'to cling to the specter of Truth and the promise of the Real'⁵⁹ even when interpretive techniques of cultural studies would preclude it.

Seeking to avoid similar neglects, this research operates on the assumption that truth or reality cannot be conceptualised or communicated outside the process of construction in language. Indeed, the next chapter of this thesis endeavours to elaborate on these assumptions and to explain their theoretical place within the landscape of this particular project.

While it can be said that Sherwin's argument that the law is fading away into popular culture is not necessarily persuasive, it is worth acknowledging the potential of one of Sherwin's stated goals. In the course of suggesting that we must be informed by affirmative postmodernism, Sherwin argues that one of his main ambitions is to 'expand the ways in which we think and talk about the law'.⁶⁰ Certainly for this research Sherwin has posed an interesting issue to consider in terms of the role of narrative in the meaning-making process:

[L]earning the ways of meaning making and reality construction is ultimately less an invitation to anxiety than an invitation to a more sophisticated sense of responsibility for the realities and meanings that we affirm or deny. It is in short, an invitation to a heightened sense of responsibility for the world we live in.⁶¹

⁵⁸ Ibid 153-4.

⁵⁹ Ibid 160.

⁶⁰ Sherwin, above n 47, 10.

⁶¹ Ibid 233.

This invitation has partly inspired this particular project. Investigation into the ways in which law students construct meaning about legal processes, concepts and values is a fascinating prospect. It is important therefore to move now to a discussion of the representations of law within those narrative settings at the core of popular culture: film and television.⁶²

C Cinematic v Small Screen Law

Within the law and popular culture field there is a dichotomy between law as presented in film and on television. For the most part a pragmatic decision, scholarship is usually devoted to one or the other. Obviously films are discrete entities unto themselves, while television programs often evolve over the course of a season or even over years. Also films usually have definite points of denouement in contrast with a television drama that can leave an issue hanging for several weeks or across seasons. While these differences might account for the higher interest among legal scholars for film analysis, primarily they explain the existence of such a dichotomy. There are of course, those scholars who bridge the two by providing a general survey of film and television fiction from underneath the law and popular culture umbrella,⁶³ but mostly analysis into the realm of visual culture is split between television and film. As such, in this section they will be addressed separately.

1 Law in the Movies

Audiences have always been attracted to cinematic portrayals of the law from the traditional classics of *Inherit the Wind* and *To Kill a Mockingbird*, to the more recent *Runaway Jury* and *The Castle*. Commensurate with the number of legal films produced over the years, there is certainly no shortage of discussions by scholars of films that depict law, legal practice and issues such as justice, discretion and

⁶² Redhead, above n 43, 10.

⁶³ For example Chase, above n 25; Avi J Stachenfeld and Christopher M Nicholson, 'Blurred Boundaries: An Analysis of the Close Relationship Between Popular Culture and the Practice of Law' (1996) 30 *University of San Francisco Law Review* 903; Denvir, above n 27.

authority/power. Moran et al in their introduction to *Law's Moving Image*⁶⁴ note that an orthodoxy setting parameters and methodology has already emerged among law and film scholarship, which includes as a dominant feature a focus on questions of representation.⁶⁵ Much of the work within this field is directed at exploring the portrayals of legal players and legal themes and/or textual analysis of legal films.⁶⁶

Greenfield, Osborn and Robson have argued that despite the diverse styles and levels of theoretical abstraction that can be found among law and film scholarship, it is possible to identify two major strands that are principally given attention.⁶⁷ The first is work which seeks to provide panoramic perspectives on law and its portrayal in film: 'Some writers in this category have concerned themselves broadly with the nature of law and justice as seen in film and what the underlying messages or ideologies are'.⁶⁸

The second area involves investigating individual films and using them as a basis for considering persistent legal themes such as criminal justice, women and the environment. For example, evaluations have been made of the portrayal of gender relations,⁶⁹ law in the courtroom,⁷⁰ social issues like divorce,⁷¹ capital punishment⁷² and images of justice,⁷³ allowing thematic explorations of law in the cinema to grow in dominance among the legal scholarship on film.

⁶⁴ Moran et al (eds), above n 38.

⁶⁵ Ibid xii.

⁶⁶ For an example of articles about legal players see Steve Greenfield, 'Hero or Villain? Cinematic lawyers and the delivery of justice' (2001) 28(1) *Journal of Law and Society* 25; for examples of legal themes see I Lurvey and S Eiseman, 'Divorce goes to the movies' (1996) 30 *University of San Francisco Law Review* 1209; for textual analysis of a legal film see Richard Sherwin, 'Cape Fear: Law's inversion and cathartic justice' (1996) 30 *University of San Francisco Law Review* 1023.

⁶⁷ Greenfield, Osborn and Robson, above n 3, 12.

⁶⁸ Ibid.

⁶⁹ S Caplow, 'Still in the Dark: Disappointing Images of Women' (1999) 20(2/3) *Women's Rights Law Reporter* 55; C Shapiro, 'Women Lawyers in Celluloid: Why Hollywood Skirts the Truth' (1995) 25 *University of Toledo Law Review* 955.

⁷⁰ Paul Bergman and Michael Asimow, *Reel Justice: the Courtroom goes to the Movies* (1996); Gerald F Uelman, 'The Trial as a Circus: Inherit the Wind' (1996) 30 *University of San Francisco Law Review* 1221.

⁷¹ Lurvey and Eiseman, above n 66; Michael Asimow, 'Divorce in the Movies: From the Hays Code to *Kramer v Kramer*' (2000) 24 *Legal Studies Forum* 221.

⁷² R M Harding, 'Celluloid Death: Cinematic Depictions of Capital Punishment' (1996) 30 *University of San Francisco Law Review* 1167.

⁷³ R Berets, 'Changing Images of Justice in American Films' (1996) 20 *Legal Studies Forum* 473; Richard Sherwin, 'Cape Fear: Law's inversion and cathartic justice' (1996) 30 *University of San*

This second strand of writing has also opened up the possibilities of discussing films that are not directly about law. Gangster movies, westerns, comedies and thrillers were among the film texts examined by Denvir and his colleagues in *Legal Reelism*,⁷⁴ where notions of justice were explored from a postmodern and feminist perspective. The essays in this collection are by non-specialists in film that use film as a tool to better understand the operation of law in the wider community. This is not to say that the law film itself has been ignored. Indeed, much attention within the scholarship is directed at evaluating the presentation of law and legal themes within obviously legal films, such as courtroom dramas (*A Few Good Men*) and movies about lawyers (*The Firm*). Considerable attention has also been given to circumscribing the legal film genre, with this concern as a major theme within two major contributions to this area: Greenfield, Osborn and Robson's *Film and the Law*,⁷⁵ and Machura and Robson's edited collection of essays *Law and Film*.⁷⁶ Although the courtroom drama is the usual suspect for any classification of law films, both these major works seek to show that the genre is not so clearly defined. Of particular note, Greenfield, Osborn and Robson suggest that in order to speak meaningfully about the subject of law or lawyers as portrayed in film, the scholar must adopt a broad approach and consider 'what the role and function of law is within society and how this is translated into film'.⁷⁷ They conclude that, more than simply courtroom dramas, the key concept of law films is the enforcement of justice, which enables various sub-categories of the genre to be created.⁷⁸

Francisco Law Review 1023; J P Brooks, 'Will Boys just be Boyz 'N the Hood? African American Directors Portray a Crumbling Justice System in Urban America' (1997) 22 *Oklahoma City University Law Review* 1.

⁷⁴ Denvir, above n 30.

⁷⁵ Greenfield, Osborn and Robson, above n 3.

⁷⁶ Stefan Machura and Peter Robson (eds), *Law and Film* (2001); see also Elkins, above n 27, 869-70 Appendix A where he suggests that it is possible to outline the structural features of a lawyer film genre.

⁷⁷ Greenfield, Osborn and Robson, above n 3, 23. Chase too goes beyond the courtroom drama trope to include a wide and possibly unexpected variety of films (for example *Wall Street* and *Fight Club*) within his definition of the legal film genre: 'Just as law is more than litigation, legal movies are more than courtroom drama': Anthony Chase, *Movies on Trial* (2002) xii.

⁷⁸ Greenfield, Osborn and Robson, above n 3, 24.

In *Movies on Trial*⁷⁹ Chase bridges the two strands of work within the film and law field by looking at the concept of law as presented in various movies and investigating the silver screen's overall contribution to an understanding of law 'as a moral and political system, not just a regime of rules'.⁸⁰

Of particular note, Chase confronts how films teach us to locate and interpret law and justice, and argues for a 'cinematic jurisprudence – a way of looking at law through the lens of the camera that projects an alternative view of legality'.⁸¹ By looking at the various aspects of the law through this cinematic lens, Chase places an importance on the way law interacts with a visual culture and acknowledges the role popular culture plays in shaping images of law and justice. In a similar vein, the research presented in this thesis confronts the issue of how images and narratives of law are interpreted and used by law students, but focuses particularly on the medium of television.⁸²

2 *Law on the Small Screen*

One of the earliest developments within the law and popular culture movement was actually the investigation of law as presented on television. The concern was primarily with the way the relationship between legal culture and television portrayals manifested itself within the minds of the public. As the main catalyst for this burgeoning area of law and popular culture, the late 1980s series *LA Law* encouraged scholars to embrace explorations into the effects of such a program on the public's perception of lawyers.⁸³

⁷⁹ Chase, above n 77.

⁸⁰ Ibid xii.

⁸¹ Ibid xii and generally Chapter 1.

⁸² The medium of television was chosen in preference to film for this research because during that particular moment in time (2000-2005) legal themed productions were especially prominent on television.

⁸³ See for example the work of Stephen Gillers, 'Popular Legal Culture: Taking L.A. Law More Seriously' (1989) 98 *Yale Law Journal* 1607; R E Rosen, 'Ethical Soap: LA Law and the Priveleging of Character' (1989) 43 *University of Miami Law Review* 1229; C Rosenberg, 'An LA Lawyer Replies' (1989) 98 *Yale Law Journal* 1625.

Following in the footsteps of *LA Law* the mid 1990s saw a resurgent injection of legal dramas into prime-time viewing as a direct response to a public appetite for shows depicting the law, lawyers and legal themes. This in turn created a contagious interest among scholars to explore the realm of fictional lawyers on television, and individual programs such as *The Practice*, *Ally McBeal* and *Law and Order* were critiqued and evaluated for the type of law and lawyers that they present.⁸⁴ For example, the collection of essays edited by Jarvis and Joseph⁸⁵ seeks to illuminate themes that are variously presented within fictional television including issues of morality,⁸⁶ gender⁸⁷ and the depiction of lawyers within sitcoms.⁸⁸ Viewing television as one aspect of legal narrative, this scholarship has thus been largely concerned with individual television programs and their presentation of the legal system and its players.

More recently in *Law and Justice as Seen on TV*⁸⁹ Rapping takes the scholarship beyond an exploration of the significance of the images presented. That is, she outlines the ‘shifts in television’s dominant ideology about law and justice, crime and punishment, and the way these shifts have coincided with broader trends in legal and political policy and history’.⁹⁰ In particular Rapping juxtaposes fictional legal entertainment and non-fictional forms such as televised trials and finds that recent television programming across all genres presents a blurry but visible general ideological slant towards social issues and crime and punishment.⁹¹ Using seemingly contrasting programs such as the melodramatic *The Practice* and Court TV’s *Crime Stories*,⁹² Rapping shows that there is a widespread tendency within American life ‘to define and approach all social issues and problems within the narrow terrain of

⁸⁴ For example see J Marek, 'The Practice and Ally McBeal: a New Image for Women Lawyers on Television?' (1999) 22(1) *Journal of American Culture* 77 and Kitei, above n 27; see generally E Rapping, *Law and Justice as Seen on TV* (2003).

⁸⁵ Paul R Joseph and Robert M Jarvis, *Prime Time Law: Fictional Television as Legal Narrative* (1998).

⁸⁶ Dawn Keetley, 'Law and Order' in Robert M. Jarvis and Paul R. Joseph (eds), *Prime Time Law: Fictional Television as Legal Narrative* (1998) 33, 33.

⁸⁷ Christine Alice Corcos, 'Women Lawyers' in Robert M. Jarvis and Paul R. Joseph (eds), *Prime Time Law: Fictional Television as Legal Narrative* (1998) 219, 219.

⁸⁸ Robert M Jarvis, 'Situation Comedies' in Joseph and Jarvis, above n 85, 167.

⁸⁹ Rapping, above n 84.

⁹⁰ Ibid 13.

⁹¹ Ibid 17.

⁹² With the rise of the courtroom as a television arena, Rapping argues that although non-fictional programs are expected to be taken seriously by engaged thoughtful viewers (unlike fictional series), they come ‘complete with editorial narrative commentary from legal “experts” who lead us to the “correct” political conclusions’: *ibid*.

criminal law’⁹³ and concludes that television, whether it be fiction or non-fiction, is a ‘useful handmaiden to those who have an interest in maintaining this broad consensus’.⁹⁴ In a similar vein, Lenz’s contribution *Changing Images of Law in Film and Television Crime Stories*⁹⁵ charts the change in criminal justice policies from liberal to conservative through an exploration of images of law and crime stories in popular legal fiction. Although examining both film and television, Lenz has contributed to a better understanding of the relationship between public opinion and legal policy by exploring shared expectations about justice in legal culture.

It is distinctive contributions such as these from Rapping and Lenz that encourage further interdisciplinary scholarship in this field, particularly where the focus is directed towards exploring and understanding the role of ascendant discourse within popular views of social and legal issues. Hence the discussions in this and the next chapter serve to clarify and position the notion of discourse within the context of first year law students’ meaning-making processes.

Across both mediums of film and television, law has been a prominent theme for many years. As has been shown in the preceding sections much scholarship has focussed primarily on either the text or the perceived impact of various representations on public perception. Yet actual empirical work on audiences of law-related media is largely uncharted territory. The next section of the chapter explains this void in more detail and outlines how the thesis seeks to address it.

D *The Empirical Void*

Earlier in this chapter it was argued that there is often a failing in the orthodoxy of law and popular scholarship. As Moran noted in relation to some film research:

[a]nother methodological characteristic of much of this work is at best a hesitancy, and at worst a complete failure, to engage with related disciplines...Little attempt has been made to

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Lenz, above n 10.

incorporate the specific disciplinary insights that this and other work on film, visual culture, cultural and social theory might contribute to understanding the complex relationship between law and the moving image.⁹⁶

Most discussions of fictional portrayals of law are therefore concerned predominantly with narrative and textual exploration and rarely seek to actively engage with insights from other disciplines.⁹⁷ This thesis seeks to directly address such a failing by actively engaging in interdisciplinarity. Yet what constitutes interdisciplinarity within the context of this project? Although Fish declares that the ‘impossibility of authentic critique is the impossibility of the interdisciplinary project’,⁹⁸ this thesis employs an argument drawn from Geertz that the ‘blurred genres’ of interdisciplinarity provide an opportunity for cultural maps to be redrawn.⁹⁹ More than merely using one discipline to illuminate another, or simply building bridges between the two,¹⁰⁰ the use of interdisciplinary methods in this thesis can be seen to be more like restructuring or transforming knowledge. Drawing heavily on theories and methods from cultural studies (as outlined in Chapter 4), it follows the example set by Moran et al and examines the impact of the moving image of law from a position within cultural theory. Situated within the context of law school, it aims to utilise television as a social and cultural practice through which to explore student production of knowledge about law, and to enrich the base from which legal education can utilise this discourse.¹⁰¹

Above all, the growing body of scholarship within the law and popular culture realm seems to also be lacking an element of empirical audience research. That is, unlike the abundant scholarship that has been produced through the study of television

⁹⁶ Moran et al (eds), above n 38, xiii.

⁹⁷ For example, Greenfield, Osborn and Robson acknowledge their approach as being grounded in legal theory as opposed to film theory, and while they attempt to engage briefly with elements such as genre and minority representation, they are keen to encourage other scholars to pursue an interaction with film theory as a ‘potentially profitable area of future enquiry’: Greenfield, Osborn and Robson, above n 3, 1.

⁹⁸ Stanley Fish, *There's No Such Thing as a Free Speech: And it's a Good Thing, Too* (1994) 242.

⁹⁹ Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (1983).

¹⁰⁰ Myrsiades, above n 46, 204.

¹⁰¹ See further Chapter 3, which outlines the unique transitory state of first year law students, who in one sense can almost be seen as a site of interdisciplinarity unto themselves.

audiences¹⁰² showing that public opinion *is* influenced by fictitious popular culture, evaluating public perception of the law through this medium has been minimally attempted. Indeed, it could even be said that legal research utilising similar methodologies to explore public opinion in relation to the law has been virtually non-existent. Although much has been discussed about the various ways in which law is depicted in visual media, very little empirical research has been utilised to explore the impact on actual audiences and their response to the law.¹⁰³ This is not to say that legal scholars are not interested in audience response. In fact many have consistently argued that information or misinformation gleaned from popular culture has significant impact on 'law' in the legal realists' sense: 'what judges, jurors, attorneys, legislators, voters and ordinary consumers or producers actually do in their contracting, fact-finding, law-applying, and law-making functions'.¹⁰⁴ Cinematic portrayals of the law receive more scholarly attention than law on television, but even within this literature there is little devotion to empirical analyses that seek to illuminate popular responses to filmic portrayals of law. One scholar who dares to tread in such uncommon ground is Meyer, whose practical work evaluates cinematic influences on real closing arguments in jury trials.¹⁰⁵ Research like Meyer's is of value because it combats the generalised questioning that is too frequently posed without answer in the literature; for example, 'how does the (popular cultural) preoccupation with lawyers affect the legal profession?'¹⁰⁶

¹⁰² For example see Chris Barker, "'Cindy's a Slut': Moral Identities and Moral Responsibility in the 'Soap Talk' of British Asian girls" (1998) 32(1) *Sociology* 65; I Ang, *Living Room Wars* (1996); R Allen (ed), *To Be Continued. Soap Opera Around the World* (1995); D Morley, *Television, Audiences and Cultural Studies* (1992); R Silverstone, *Television and Everyday Life* (1994); Tamar Liebes and Elihu Katz, *The Export of Meaning: Cross-Cultural Readings of Dallas* (1993); I Ang, *Watching Dallas: Soap Opera and the Melodramatic Imagination* (1985); Geraghty, *Women In Soap* (1991).

¹⁰³ Some research has been done recently in the US into the effects of court television (programming that airs live court cases) on public perception of and response to the law. See Kimberlianne Podlas, 'The Tale That Television Tells.' (Paper presented at the Power of Stories: Intersections of Law, Culture and Literature, Gloucester, UK, 2005).

¹⁰⁴ Michael Asimow, 'Embodiment of Evil: Law Firms in the Movies' (2001) 48 *UCLA Law Review* 1339, 1341. See also Friedman, above n 26.

¹⁰⁵ Philip N Meyer, 'Why a Jury Trial is More Like a Film Than a Novel' (2001) 28 *Journal of Law and Society* 133; Philip N Meyer, 'Desperate for Love III: Rethinking Closing Arguments as Stories' (1999) 50 *SC Law Review* 715; Philip N Meyer, 'Desperate for Love II: Further Reflections on the Interpenetration of Legal and Popular Storytelling in Closing Arguments to a Jury in a Complex Criminal Case' (1996) 30 *U.S. F. L. Rev.* 931; Philip N Meyer, 'Desperate for Love: Cinematic Influences Upon a Defendant's Closing Argument to a Jury' (1994) 18 *Vermont Law Review* 721.

¹⁰⁶ Elkins, above n 27, footnote 80.

1 *The Impetus of a Transnational Study*

Only in recent times have legal scholars begun to acknowledge that there is great value in exploring the intersection between law students and their responses to the various forms of popular culture. One such example is a quantitative survey conducted in 2004, by a group of international scholars of which I was a part. In this survey we sought to compare what first year law students in different countries thought about the character of lawyers, and also where they obtained the information that helped them form this opinion.¹⁰⁷ In particular, the group's focus was on 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 the various institutions: the United States (UCLA), England (Westminster), Scotland (Strathclyde), Germany (Bochum), Argentina (Buenos Aires) and Australia (Wollongong). The project involved conducting the same survey among first year law students during their first week of law school in 2002/3, 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.

It is important to note from this transnational study that a large number of law students in all countries report that movies and television shows are actually quite helpful in forming their opinions about lawyers.¹⁰⁸ 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% of our students watch one or more legal television shows regularly, and 76% had seen three

¹⁰⁷ Michael Asimow et al, 'Perceptions of Lawyers - a transnational study of student views on the image of law and lawyers' (2005) 12(3) *International Journal of the Legal Profession* 407. Another example is the work of Salzmann and Dunwoody who used law students to establish the *accuracy* of law images in popular culture: Victoria S Salzmann and Philip T Dunwoody, 'Prime-Time Lies: Do Portrayals of Lawyers Influence How People Think About the Legal Profession?' (2005) 58 *Southern Methodist University Law Review* 411. This is contrasted with the transnational study which was more concerned with law students' *reflections* of being a lawyer.

¹⁰⁸ Asimow et al, above n 107.

or more of the movies listed. Both these figures were substantially higher than students in the other jurisdictions (even more than the US students).¹⁰⁹ Underpinned by the active audience theory,¹¹⁰ which contends that audiences are active producers of meaning from within their own cultural context, this 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.

From a qualitative perspective, this thesis aims to develop the findings of the transnational study. It seeks to assert that first year law students utilise popular culture to transform understandings about the practice of law, and that in discussing their interpretations of television stories, students reveal to what ends they use these media. Seeking to engage with the law student as a specific cultural entity, the empirical methods utilised in this project and discussed in Chapter 4 have enabled a full exploration of the types of responses students may have to viewing representations of law on television. By discussing their views on the stories of law portrayed on contemporary television law students share and transform meaning about the practice of law. It is argued that through such dialogue it is possible to qualitatively explore one aspect of the law and popular culture relationship. This thesis presents empirical work on audiences that has clearly been absent from the research quantum. The next section of the chapter, therefore explains the key place of the law student as an active audience member within the dual realms of law and popular culture.

III BLURRED BOUNDARIES – EXPLORATION OF STORIES AND THE UNIQUE POSITION OF THE FIRST YEAR LAW STUDENT

The work that has been undertaken in this growing field over the last few decades has been exciting and inspiring, but it is argued that there is a lack of engaged scholarly activity concerning television representations and their connection with law student

¹⁰⁹ This was surprising given that the bulk of films and television productions viewed by Australians is produced in the US. In fact US students had only seen 66% of the movies listed. Interestingly Scottish students had seen the fewest with only 55% having seen three or more movies.

¹¹⁰ See further Morley, above n 102, and Chris Barker, *Cultural Studies: Theory and Practice* (2000) 11. These methodologies will be discussed further in Chapter 4.

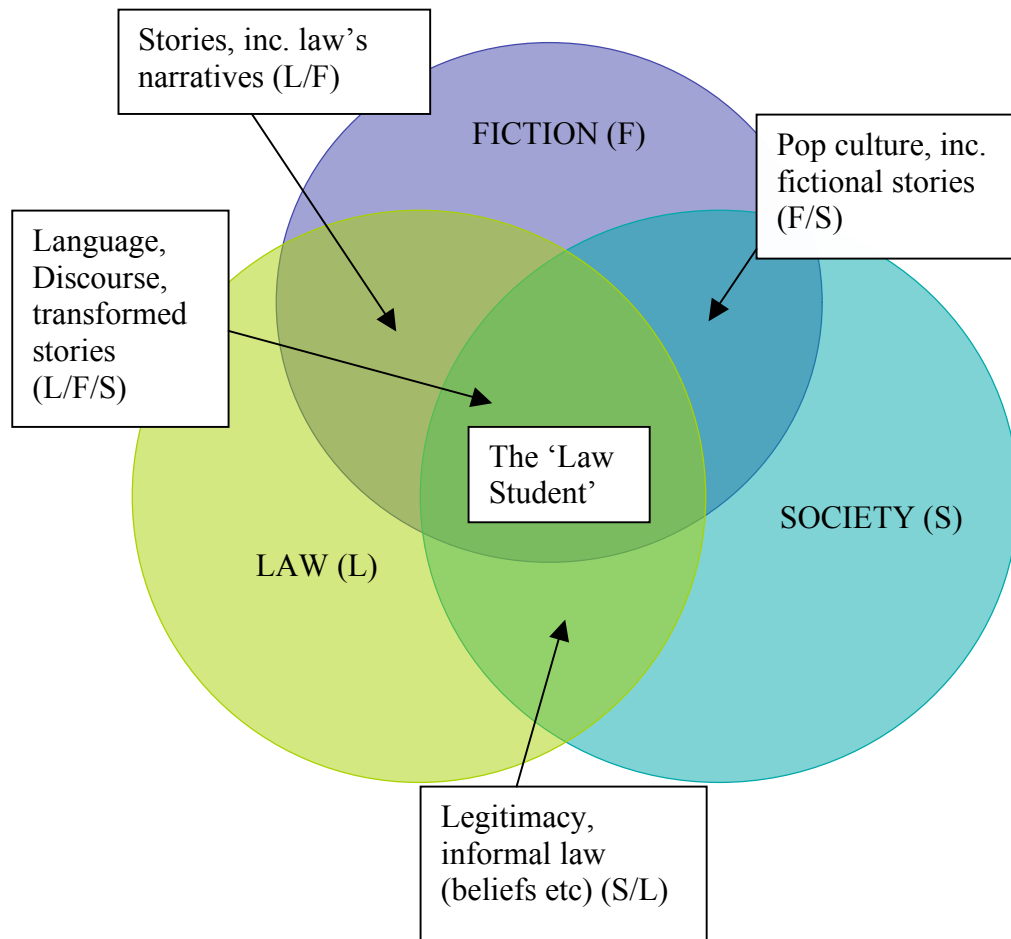
perceptions. This section of the chapter introduces the case that evaluating student understandings in response to popular culture can be a valuable contribution to this interdisciplinary field and to legal education in general. It begins with the argument that the first year law student is in a unique position in relation to the intermingling cultures of law, society and popular media because of the permeable boundaries between them. The students' location at this intersection places them in an intriguing process of transformation. As future lawyers this process allows them to reflect on and evaluate what they are learning and to actively critique what they see as law. After moving through a brief discussion of the students' use of stories within this process of change, the chapter concludes with a summary of the importance of a fresh focus on legal education for students' identity development and outlines the particular research questions designed for this thesis.

*A The Unique Position of First Year Law Students – A jurisprudential
raison d'être*

Most first year law students begin their immersion into the legal world with the commencement of their studies. As a group, they are in a significant stage of transformation. They have not yet adopted all of the norms that underpin the legal system and they have little or no experience of the law, and yet their cumulative involvement within law school culture invites them to take a step away from the culture of the public and into the domain of the legal. They are becoming immersed in a sea of new language, new stories of law, and new perspectives of legal texts, while they are still drawn to the stories of law as told in the texts of popular culture. As law students start to experience legal education they begin a shared involvement with learning traditional legal texts and with reading and responding to the stories of lawyers in literature, in movies, and on television. This means they are effectively negotiating the social and legal spheres from a straddle position – as if they have a foot in each camp.

It is this shared involvement with the elements of law, society, and fiction that places students, as a cultural entity, quite centrally amid these three domains. The diagram below was devised to illustrate this unique intersection:¹¹¹

Figure 2.1



Given that the boundaries between law, fiction and society are ever permeable and that their porous nature allows interaction to occur in any direction, of particular interest here is the transformed understanding and production of stories by law students who are placed at the central site of intersection. In other words, first year law students within the context of law school are a perfect microcosm in which to

¹¹¹ My thanks to Dr Rick Mohr for this diagrammatical inspiration and assistance.

study the intermingling of law, society and fiction. For example, through the students it is possible to explore how law influences fiction by inspiring stories about human nature, morals and values; and how, conversely, fiction influences law by providing narratives of right and wrong (L/F on the diagram). Further, students can help to illuminate societal issues that are reflected in popular fiction, or highlight expectations that stories may engender in society (F/S); and they can utilise popular stories to comment on and evaluate law's legitimacy in a given area (S/L).

First year law students are therefore in a unique position as they begin to experience and understand the world of lawyering. Individually and jointly, students form a site of intersection between the cultures of law and popular media and point to the fact 'that discursive communities have permeable and ever-shifting borders'.¹¹² It is these permeable boundaries that allow students, as part of the discursive community of law school, to actively engage in the production of their own stories – stories that reflect the form they are imagining their legal lives will take. Students have indicated that it is for this reason that they enjoy watching representations of the law on film and television. By taking up the study of law, and adopting the stories of legal culture, they cannot help but reinvent their internalised stories.¹¹³

1 Transformation: How Law School is Like an 'Extreme Makeover'

This thesis recognises that law students are in this position of change and places importance on the role of the law school with its own distinct language and storytelling methods, through which students navigate a journey of meaning-making and exchange. As will be described in Chapter 3, legal culture is a mixture of social phenomena that enables law to be interpreted, and transformed in many ways and law students are a part of this differentiated and dynamic legal culture via their legal education. As they begin an aspect of transformation that would not occur outside the

¹¹² Silbey, above n 11.

¹¹³ 'When we replay filmic text on the screen of our imagination, we imaginatively reinvent the text, grafting the images onto internalised story-structures that make the story our own on subsequent interior viewing': Philip N Meyer, 'Using Non-Fiction Films as Visual Texts in the First Year Criminal Law Course' (2004) 25 *Vermont Law Review* 895, 897.

law school setting, they participate in a cultural exchange of ideas, perceptions and stories about lawyering.

In one sense, the role of the law school could be likened to the transforming work of an extreme makeover. In the world of popular television, *Extreme Makeover*¹¹⁴ is the epitome of the 'reality' genre and follows the stories of men and women who are chosen for a unique chance to completely change their lives via an overhaul of their looks. This transformation is made possible through the refining work of external professionals and aims to bring about a change that the individuals could not bring about themselves. To view law school in this way is to recognise its enormous propensity for transformation. Law school provides a myriad of circumstances where students can experience the dynamic forces of legal culture, and these situations test students' understandings forcing them to actively interpret and produce meanings. Just like the candidates on *Extreme Makeover*, the law students' access to both the internal and external legal culture gives them a unique opportunity to bring about personal change. Through the exchange of knowledge, the challenging of perceptions and the developing of values, students are able to take part in a transformation of self.¹¹⁵

The law school thus becomes the 'semi-professional enclave which has its own distinct language, ways of thinking and socialisation process,'¹¹⁶ through which students navigate this transforming makeover. In this way legal education provides the means through which students can construct an understanding of, and in their own way contribute to, legal culture – they are transforming and producing stories of law through a utilisation of both popular cultural texts and legal texts. But unlike the extreme makeovers depicted on reality television, the students' burgeoning 'new look' is not a superficial or fanciful approach to change, where the alterations are really only skin-deep. Rather, it is a transformation process that enables students to

¹¹⁴ *Extreme Makeover* (ABC) (first airing in the US on 23 April 2003 and airing in Australia on the Nine Network).

¹¹⁵ James R Elkins, 'Becoming a Lawyer: The Transformation of Self During Legal Education' (1983) 66 *Soundings* 450.

¹¹⁶ Kathy Laster, *Law as Culture* (1997) 6.

stand ‘in a different place to view the same world’¹¹⁷ and is cumulative and evolutionary, and has the potential to enable self-reflection and awareness of identity development. It is important then to consider the ways in which law students through their discussions and interactions with popular culture (among other influences) challenge, transform, and reinvent understandings of lawyers and law through the interpretation of stories.

Can the representations of law on fictional television have a role in the individual’s identity development or contribute to their ethical awareness? One way to explore this question is to study law students. Although a study of each element of the law and popular culture interface (as described in Figure 2.1 above) would require much more attention than this thesis can give, the focus here is narrowed to a specific exploration of the law student’s position at its centre. The following discussion outlines the role of stories in the students’ transformation of meaning about law.

2 Stories Interwoven Through Cultures: How Students Transform Popular Fiction into Stories of Their Own

In conceptualising his idea of the ‘nomos’ (the cultural world of law), Cover recognised that law is more than just formal institutions and rules and that, as a social institution, law includes what people believe law is and the stories they tell about it.¹¹⁸ In this way the nomos is seen to include the stories of law in society that help to legitimise and make sense of law.¹¹⁹ The nomos can only be understood in the context of the narratives that substantiate and give it meaning, and so to understand the world of law we must begin to appreciate how individuals conceive of and construct meaning about the law through stories.¹²⁰ Such work underlies what is at the heart of this research. By constructing meaning about law through stories, both heard and told, students are creating the possibilities for transformation – of social life, of identity, and of the law. In taking up the question of how students attach

¹¹⁷ Elkins, above n 115, 451.

¹¹⁸ Robert M Cover, ‘Nomos and Narrative’ (1983) 97 *Harvard Law Review* 4, 4.

¹¹⁹ Podlas, above n 103, 1.

¹²⁰ Cover, above n 118, 5.

meanings to legal practices and experiences, this research adopts a constitutive perspective about the nomos:

Instead of conceptualising law as a tool for resolving conflict, this approach asks how legal concepts influence the goals, options, choices, and problems of ordinary individuals. In this formulation, legal consciousness is not simply a summary of a person's attitudes and opinions about law and the legal system. Instead, legal consciousness is reflected in the stories people tell about their everyday lives and in their social practices – going to court, talking about problems, engaging in disputes, and avoiding conflict.¹²¹

Law students read and interpret stories in popular culture and convert these into transformed understandings about the law and legal practices. The focus of this research is to access these understandings via the stories that students tell in response to fictional narratives within popular media.

The connection between storytelling and law is no longer a novelty. With legal storytelling now a focal interest in contemporary jurisprudence, many argue that law and narrative are inseparably related.¹²² And yet, as Amsterdam has argued:

Law lives on narrative ... The law is awash with storytelling. Clients tell stories to lawyers, who must figure out what to make of what they hear. As clients and lawyers talk, the client's story gets recast into plights and prospects, plots and pilgrimages into possible worlds...If circumstances warrant, the lawyers retell their clients' stories in the form of pleas and arguments to judges and testimonies to juries ... This endless telling and retelling, casting and recasting is essential to the conduct of the law. It is how law's actors comprehend whatever series of events they make the subject of their legal actions.¹²³

Whether we acknowledge it or not, people do 'express themselves and manage their lives in some measure through the telling of stories'.¹²⁴ Many scholars have therefore

¹²¹ Anna-Maria Marshall and Scott Barclay, 'Symposium: In Their Own Words: How Ordinary People Construct the Legal World' (2003) 28(3) *Law and Social Inquiry* 617, 618.

¹²² Elkins, above n 27, 826 footnote 67.

¹²³ Anthony G Amsterdam and Jerome Bruner, *Minding the Law* (2000) 110.

¹²⁴ Nancy L Cook, 'Symposium on Law, Literature and the Humanities: Outside the Tradition: Literature as Legal Scholarship: The Call to Stories: Speaking in and About Stories' (1994) 63(Fall) *University of Cincinnati Law Review* 95, 95.

argued that there is a place for stories within the legal profession, with a growing recognition that lawyers operate in a predominantly narrative culture and can be easily seen as storytellers in their own right.¹²⁵ Entering law school from an extremely visual storytelling culture, students too exhibit a certain level of comfort in developing aesthetic sensibilities as future legal cultural storytellers. Students are extremely active in the process of consuming stories of law and are constructing 'their own realities out of the . . . material provided by the cultural product'¹²⁶ of the legal drama.

Story is one way that we deal with our experience and understanding of the world and ourselves in the world. And we can actively engage in our own experience—in which case we become the teller of stories, our own or the stories of others. . . . We find out who we are as persons by the story we tell, by the conversations we have with others, the way we imagine ourselves, and the way we are able to understand and reflect on the way our lives unfold.¹²⁷

For each new batch of first year students this is exactly the journey of self-discovery and story production that is activated by the commencement of their legal education. As they encounter the intersection of law and society from within the porous walls of law school they are actively engaging in a transformation of stories. As they participate in classroom discussions, conduct informal conversations with friends, and engage in legal writing tasks, law students are describing how they individually conceive of law, value law and pursue law. It is important then to explore law students' storied responses to popular culture and more specifically to identify how they utilise them to begin constructing expectations and identity. While Chapter 4 will discuss the ways in which it is possible to explore these interpretive frameworks within which students transform stories, this section now turns in conclusion to an explanation of the uniqueness and importance of this research.

¹²⁵ James R Elkins, *Lawyers and Film: Narrative & Storytelling* (2004) West Virginia University <<http://myweb.wvnet.edu/~jelkins/film04/story.html>> at 18 September 2005.

¹²⁶ Asimow et al, above n 107, 412.

¹²⁷ James R Elkins, 'On the Emergence of Narrative Jurisprudence: The Humanistic Perspective Finds a New Path' (1985) 9(2) *Legal Studies Forum* 123, 141.

B Students' Implicit Curriculum: A New Empirical Focus

The empirical exploration of first year law students as they begin the process of becoming a lawyer is the particular focus of this thesis. In their discussions about the law that is represented on television students articulate their understanding of what it means to be a lawyer. In so doing, they reveal how television is used as one source to transform meaning about the practice of law and to begin creating their own legal identity. Narrative is at the heart of self-identity, in that 'identity is understood as a story of and about the self'.¹²⁸ As part of the wider cultural cluster of narratives and discourses, legal or otherwise, the culturally produced stories students transform and construct about lawyering contribute to their identity development. It is the process of such transformation and the effects it has on students' implicit education and identity construction that is the key interest of this research.

1 Implicit Education and Identity Construction

Within legal education there is a clear emphasis placed on the explicit curriculum as crucial to any student's legal training. However, often overlooked is the necessity of student interaction with the implicit curriculum, which encourages and stimulates critical evaluation, self-reflection and the development of philosophies that will have a bearing on identity construction. The level of student exposure to this aspect of legal education will have a direct impact on the type of lawyers that students will be:

...I have always assumed that it is the sentiments, sensibilities, rhetoric, and philosophies we adopt and enact as lawyers, as much as it is a knowledge of law, that determines the kind of lawyers we will be (and determines how one becomes one kind of lawyer rather than another). If, indeed, it is sentiments, philosophies, rhetoric, and identity that give a lawyer's life shape and direction, we are still left with the central question – 'What does it mean to be a lawyer?' – a question central to the implicit curriculum we find in legal education. When we teach to, with, and against this implicit curriculum, we need the kind of texts that make it possible to investigate the meaning question, to make it a serious part of one's education.¹²⁹

¹²⁸ Chris Barker, *The Sage Dictionary of Cultural Studies* (2004), 131.

¹²⁹ Elkins, above n 27, 817–818.

The thesis proceeds on the footing that investigating the ‘meaning question’ is an extremely valuable aspect of legal education, and that television’s presentation of law stories is one textual access point for making this possible. The qualitative research that is undertaken in this project indeed shows that utilising television fiction to explore student interaction with popular culture provides valuable insight into the students’ process of adopting a legal mind-set and persona. In particular, student discussions allow exploration of two major aspects of their developing implicit education. In the first instance, they are utilising stories to produce expectations of a future legal career and, in the process, develop ethical awareness thereby taking up legal identity. In the second aspect they reveal a significant capacity to critically evaluate, in various ways, the images they are viewing. Thinking of television fiction then as stories to be put to use in one’s legal education, it is argued that these stories can stimulate self-reflection and critical evaluation skills as well as providing a connection for students to the future. Stories are understood through a process of interpretation and it is this process that shapes the students’ understanding of the law:

This process of interpretation is grounded in experience and varies by such characteristics as race, gender, age, class, education, and geographic location, among others. It is a process that links law, culture and markets to provide a multi-valued and cultural-interpretive frame of the operative place and space of law. It informs us of the place where law originates, where it happens, where it is accessible, such as in the courthouse, on the street, in the police station, at the District Attorney’s office, or in the corporate boardroom. It also informs us of the space occupied by the law as a mediator of tension between different cultural-interpretive communities. This space involves the metaphorical space of social relationships, market exchange, and political authority. It represents the way in which law filters into and permeates our lives, and shapes an understanding of our place before, and within the law.¹³⁰

Almost like the cyclical interface between law, society and fiction in Figure 2.1, law students watch and listen to stories of law on television, and transform these into their own constructed stories of how life will be as a lawyer. This realisation prompted my approach to this project, as I understood that the key objective ought not to be determining what the narrative in the legal fiction tells students about law, but instead

¹³⁰ Malloy, above n 1, 1161–2.

how that story is used in their lives. More specifically, the aim was to explore how it is used by them: first, to identify what a lawyer is; second, to construct and project identities for themselves as lawyers; and third, to develop ethical awareness as a crucial aspect of their legal education.¹³¹

C The Research Questions – Finding a Place ‘before, and within, the law’.

In acknowledging that law school should address the implicit as well as explicit curriculum, it becomes clear that legal education can truly be a transformative process that shapes how students learn what it means to be a lawyer. By shaping students’ understandings of their place ‘before and within the law’,¹³² legal stories on television are one way in which legal education can seek to include what has often been omitted from the curriculum. The medium of television offers a great opportunity to focus on this process. Having outlined the broad landscape within which this research is conducted – that is, the law students’ interpretation and construction of legal meaning and identity among the landscape of popular culture – it is now important to turn to the research questions this thesis seeks to address.

In order to address the broad objectives as outlined in Chapter 1 and accommodate the dynamic nature of empirical research, two groups of specific research questions for the project were developed. The first dealt with expectations and identity construction, while the second explored the development of students’ critical abilities.

1 Shaping Expectations and Development of Legal Identity

This first group of research questions sprang from an early desire to explore why students wanted to study law – that is, what influenced them to make this career decision, and what sorts of responses¹³³ does television provoke in first year law

¹³¹ This last aspect will be discussed more fully in Chapter 9.

¹³² Malloy, above n 1, 1161–2.

¹³³ Note that the word ‘response’ is used instead of the more common ‘effects’ or ‘influence’. This is to indicate that students actively respond to the images of law by transforming meaning in relation to it. This will be discussed further in Chapter 4.

students? To provide a initial framework for this study, it was determined that the following questions needed to be addressed by the research:

- What is the allure to a career in law? That is, what factors led students to law school?
- How do students envisage themselves as lawyers? And how do they create expectations of the career they have chosen?
- What do students learn about being a lawyer from television, and how have they transformed that meaning?
- What are the dilemmas/obstacles they believe they will have to face as lawyers?
- What dilemmas have they seen television lawyers face?

As the focus groups were being conducted, it was clear that students were articulating their process of identity construction; and accordingly further research questions were developed in order that this too might be addressed by the research:

- What does an understanding of ‘being a lawyer’ mean in terms of their character development and identity construction?
- What stories are being told about the legal world they want to inhabit?
- What types of lawyers do students see and/or identify with?
- What ethical dilemmas do students observe on television, and how do the students interpret them?
- What ethical stance are students adopting in order to make sense of lawyers’ actions?
- What is the role of legal education in helping students to develop ethical awareness?

These two sets of questions are specifically addressed in the analysis of student talk presented in Chapter 6. That chapter seeks to describe the way in which students utilise television portrayals to shape their expectations and aspirations of what it will mean to be a lawyer, and to explore the implications of the ethical discourse that is produced by their talk.

2 Drawing out Critical Abilities

In the initial stages of analysing the students' talk, it became apparent that the stories told by students in relation to their viewing responses highlighted a need to address an implicit legal education. Emerging from the data was a trend among the students to utilise the television images to develop skills in critical evaluation and a development of awareness and self-reflection. Naturally, this led to a further group of research questions being developed which would seek to illuminate the student's developing critical abilities:

- What skills and abilities are students developing in response to watching fictional television?
- What level of critique do students apply to representation on television in terms of mimesis?
- What elements of television (e.g. thematic development, messaging, story-telling, stereotyping, critique) do students identify and respond to?
- Do students see law in popular culture as a positive or negative contribution to public understandings of law?
- Do students recognise the presentation of particular discourses in the law stories portrayed on television? And how do the students react to them? Do they reinforce or reject them?
- What kind of 'story' is emerging from the students in relation to the fictional stories of lawyers on television? And how has it become meaningful in their lives?
- What do students learn about themselves in critically evaluating television representations of lawyers?

In Chapter 7, this second group of questions is addressed. In that chapter, the discussion highlights how students draw on and develop their critical abilities through an effective utilisation of fictional television portrayals and draws attention to the need for legal education to acknowledge such activity.

IV CONCLUSION

This chapter has made an argument for the place of empirical audience research within the intersecting fields of law and popular culture. It has argued that investigating student responses to popular culture is relatively uncharted territory within this field and has shown that the transitional position of the first year law student provides unique access to the process of transformation occurring within legal education.

An exploration of the research questions outlined above is thus ‘central to a student's legal education, even if they happen to be questions which are not consistently raised in more traditional courses’.¹³⁴ This chapter has thus endeavoured to show that such questions are necessary in light of the students’ unique transformative position amid the porous boundaries of law, fiction and society. Through stories, students interpret and transform meanings of law, and construct identity. The first year experience has transformation as its framework. Through the window of popular culture it is possible to piece together a story of what students are seeking to gain from the law school journey; what they are willing to endure to achieve it; and how they are currently constructing legal identity.¹³⁵ The next chapter defines the nature of legal culture and notions of legal identity within the context of understanding and conceptualising student construction of meanings.

¹³⁴ Elkins, above n 27, 867.

¹³⁵ Frank Pommersheim, 'Voice, Values, and Community: Some Reflections on Legal Writing' (1988) 12(4) *Legal Studies Forum* 477, 478.

CHAPTER 3

ISSUES OF CULTURE AND IDENTITY WITHIN THE LAW SCHOOL

I INTRODUCTION

In Chapter 2, the broad landscape of a study in law and popular culture was examined. It was argued that first year students, who are situated at the intersection of law and culture, are in the process of transformation. It was further argued that this thesis seeks to contribute to filling an empirical gap by exploring the ways in which students respond to representations of the law in popular culture. In order to carry on this research and fulfil its objectives, it is important to understand the meaning of culture in terms of its relationship with the law and to understand how students form and maintain legal identity within that relationship.

The concept of culture is troublingly vague and, at the same time, hotly contested, and law's relation to culture is as complex, varied, and disputed as the concept itself.¹

In a project such as this, where law students are asked to comment on and interpret the law as viewed on television, defining 'legal culture' (and in turn 'popular legal culture') becomes fundamental to understanding the ways in which popular culture intersects with the law. As terms that are frequently in use, particularly within socio-legal circles, they have fuelled many discussions among scholars of law, anthropologists, sociologists and cultural theorists. In each of these fields much literature is devoted to providing more specific definitions from their own theoretical and philosophical traditions. Within the tradition of law, this chapter is concerned with an examination of the terms surrounding the concept of legal culture. It does so in order to encourage understandings about student interactions with popular cultural

¹ A Sarat and T Kearns, 'The Cultural Lives of Law' in A. Sarat and T. Kearns (eds), *Law and the Domains of Culture* (1998) 1.

representations of the law and to describe the terrain within which student legal identity is being constructed.

In Section II, the chapter first addresses the ubiquitous notion of culture and describes how it is defined throughout this thesis as being constituted by socially shared and interpreted constructions of meaning. The chapter then moves in Section III to an examination of legal culture as a site of intersection between law and culture, and progresses to a discussion of the contested definitions of popular legal culture. Within this section it is argued that popular legal culture is a concept that should be seen as the production, transformation and exchange of meaning in relation to the law. Focusing on the transformation of meaning in Section IV, the chapter lastly delves into an exploration of the first year law student's transformative process and identity construction. It is here argued that reading popular stories is one possible resource for students to construct a legal identity and begin to understand their own processes of meaning-making within legal culture.

II THE IDEA OF CULTURE

'To talk about culture is, in the first instance, to venture into a field where there are almost as many definitions of the term as there are discussions of it.'² Indeed, most scholarship within the cultural studies movement indicates that definitions of 'culture' are often fiercely disputed and that any attempt at defining it within specific research assumptions and ideologies must be recognised as simply part of an ongoing conversation about what we should take 'culture' to mean.

Anthropologists over the years have contributed to this ongoing discussion by creating a list of the various definitions of culture. Broadly simplified, this anthropological list has included concepts that define culture as historical, topical, behavioural, mental, functional, normative, structural and symbolic.³ Of course, the particular concept chosen by a researcher will be influenced by his or her individual

² Ibid.

³ John H Bodley, *An Anthropological Perspective from Cultural Anthropology: Tribes, States and the Global System* (1994) 10.

research questions and methodological positions. This thesis has a conceptual basis in three definitions taken from this list: (i) behavioural – culture is shared, it is learned human behaviour, and it is a way of life; (ii) normative – culture is ideals, values or rules for living; and (iii) structural – culture consists of patterned and interrelated ideas, symbols, or behaviours.

In its infancy, the term culture referred simply to the cultivation of, say, crops or animals (hence ‘agriculture’) and in the eighteenth century this element of cultivation became particularly linked with an explanation of the process of human civilisation and development.⁴ But by the second half of the nineteenth century the term ‘culture’ became associated with the ‘high arts’ – a privileged space of creativity and knowledge which included philosophy, classical music and literature, painting, sculpture and so forth. Over time with the development of the social sciences of sociology and anthropology, and more recently contemporary cultural studies, the concept of culture has developed more into a social description of the daily lived experience where the focus is on meaning.⁵ The work of Williams and Hall have been particularly influential in this regard and emphasises that culture is comprised of a set of meaningful discourses that provide a way of speaking and viewing the world.

In his early work, Williams outlined a ‘social’ definition of culture where culture is understood as patterns of learned (and transformed) behaviours, and symbols of meaning:

...culture is a description of a particular way of life, which expresses certain meanings and values not only in art and learning but also in institutions and ordinary behaviour. The analysis of culture, from such a definition, is the clarification of the meanings and values implicit and explicit in particular ways of life, a particular culture.⁶

⁴ Raymond Williams, *Keywords* (1983) 87.

⁵ Paul Du Gay et al, *Doing Cultural Studies: The Story of the Sony Walkman* (1997) 11–12.

⁶ Raymond Williams, *The Long Revolution* (1961) 57.

This broader understanding posits culture as encompassing all social and political institutions and practices, with meaning as an expression of those practices. Although Hall approaches culture from a more structuralist position (where meaning is the outcome of signifying practices giving other actions meaning) he is in agreement with Williams on the central place of meaning within culture. Hall argues that culture involves ‘all those practices which are not simply genetically programmed into us but which carry meaning and value for us ... it is what distinguishes the “human” element in social life from what is simply biologically driven’.⁷ Cultural analysis then, is not centrally concerned with evaluation or comparison as its function, but instead with the study of meanings and values from a particular way of life ‘by which social and cultural development as a whole can be better understood’.⁸ This focus enables the shared values and attitudes of a particular group or society to be explored and for the identities formed within that group to be recognised.

As will be discussed below, first year law students form a differentiated aggregate that, by virtue of their position within the law school, enables them to tacitly share certain attitudes and perspectives. While an analysis of this particular cultural group is therefore concerned to explore those attitudes and perspectives that are both challenged and shared by its members, it is important to go further than this. By seeking to ask questions about how meaning is actually produced, transformed, shared and contested among the group, ‘culture’ is seen as not just as an understanding of a ‘way of life’, but further, as an exploration of the production and circulation of meaning within all social practices.⁹ This allows for a deeper investigation of the role that transformation of meaning plays in the process of student legal identity construction. It is this focus on meaning that Hall argues is an integral role of culture, which

is not so much a set of *things* – novels and paintings or TV programmes and comics – as a process, a set of *practices*. Primarily, culture is concerned with the production and the

⁷ S Hall (ed), *Representation: Cultural Representations and Signifying Practices* (1997) 3.

⁸ Williams, above n 6, 42.

⁹ Du Gay et al, above n 5, 13.

exchange of meanings – ‘the giving and taking of meaning’ – between the members of a society or group.¹⁰

Hall further describes such an exchange of meaning as conceptual ‘maps’ of meaning whereby culture is that which we carry around inside us and in relation to our interactions with others. Without them, we could not interpret the world in a meaningful way.¹¹ Our use of these maps allows us to actively interpret the actions of ourselves and those around us, and meaning is therefore exchanged and reconstructed via our access to a shared language.¹² Likewise, Geertz espouses a concept of culture that is interpretive in nature:

Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretative one in search of meaning.¹³

To Geertz, culture is a context within which social events, behaviour, institutions or processes ‘can be intelligently – that is, thickly – described’.¹⁴ Further, the ‘webs of significance’ spun by humans through signification are constituted by their social constructions of meaning that are interpreted and shared with other members.¹⁵ This shared aspect of culture is the notion of culture that it is utilised in this thesis. That is, culture is seen as emphasising shared meanings, and is discussed as a set of practices and processes that utilise representational systems to produce and exchange meaning. In this way, a reference to culture in this thesis has connections with a behavioural and structural semiotic position. Culture is thus viewed as the pattern of integrated practices and shared meaning-making processes of a social group, which is reflected in the values, speech, symbols and action of the individuals.

¹⁰ Hall, above n 7, 2.

¹¹ Ibid 17.

¹² Ibid. The concept of language here is one that encompasses all forms of signification – that is, the production of meaning through sign systems, including both visual and verbal.

¹³ Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (1973) 4–5.

¹⁴ Ibid 14.

¹⁵ Ibid 4–5.

Yet if we see culture as ‘the production and circulation of meaning’ then how do meanings actually circulate? The concept of discourse as developed by Foucault offers an examination of how certain meanings attach themselves to certain signs over a period of time and particularly how ‘knowledge and power produce and sustain power relations’.¹⁶ In this sense, it is relevant to briefly signal the importance of discourse in defining culture.

A Discourse

The notion of discourse is concerned with disciplinary ways of ‘speaking’ through which objects and practices acquire meaning. It refers to a ‘cluster (or formation) of ideas, images and practices, which provide ways of talking about forms of knowledge’ associated with a specified activity or institution.¹⁷ As a way to represent these forms of knowledge, discourse focuses on larger units of analysis than signs within language and views narratives, groups of images, and statements that operate across a variety of texts and knowledge areas as constitutive of meaning.¹⁸ Viewing it as a purely social act, Foucault argues that it is through discourse that human beings understand themselves, produce knowledge and construct ‘truth’, in relation to the social world: ‘since we can only have a knowledge of things if they have a meaning, it is discourse – not the things in themselves – which produces knowledge’.¹⁹ Because it is not fixed or universal, this knowledge is a production of discourse and links the construction and reproduction of ‘truths’ to the maintenance of power. In this way, culture can then be viewed as a

significant site for the formation of discourses by which one social group or community (a sex, ‘race’, nation or society) legitimates its power over another group or community. Equally, culture becomes an important place where power, and the meanings that uphold power, can be resisted.²⁰

¹⁶ Judy Giles and Tim Middleton, *Studying Culture: A Practical Introduction* (1999), 65.

¹⁷ Hall, above n 7, 6.

¹⁸ Ibid 42.

¹⁹ Ibid 45. See Michel Foucault, *The Archaeology of Knowledge* (1972).

²⁰ Giles and Middleton, above n 16, 25.

By disciplining language and behaviour according to that which our culture says is true (that is, we all agree that it is true) discourse is something we learn or are acculturated into. All groups have discourses with institutional links, and the law is no exception. Interestingly, as a cultural artefact, the 'law' itself has a distinct role in power and truth relations. With its traditions of objectivity and autonomy, the law can be seen as a mechanism for maintaining the hegemonic cultural values and interests within society or, at the very least, as an accessible arena in which to observe how these interests are maintained, challenged and altered. Through the operation of power in social practice, legal discourse can then be said to construct, define and circulate the objects of knowledge about law by regulating which meanings can or cannot be deployed.

Thus within the law, discourse functions not only in the production or reading of legal texts, but also in making sense of the social experience of the legal world.²¹ In particular it is the means by which we are able to act, speak and make sense of things.²² Therefore it is through discourse that first year law students will be able to shape their understanding of themselves and the world around them, and begin developing capacities for self-reflection, critical abilities and ethical development. Not only this, but the discursive formations of law school provide a source of identity, allowing for the construction of 'us' who are 'lawyers' in relation to 'them' who are not.²³ The relationship between culture and identity will be discussed in more depth below, but it is argued here that discourse connects knowledge with power, 'makes up or constructs identities and subjectivities, and defines the way certain things are represented, thought about, practiced and studied'.²⁴ In applying Foucault's use of discourse to signify ways of constituting knowledge and meaning within a disciplinary or institutional location,²⁵ it is important to turn in the next section more

²¹ J Fiske, *Television Culture* (1987) 14–15.

²² Geoff Danaher, Tony Schirato and Jen Webb, *Understanding Foucault* (2000) 31.

²³ Edward Said, *Culture and Imperialism* (1993) xiii quoted in Giles and Middleton, above n 16, 26. In this sense, the construction of the lawyer/non-lawyer distinction supports the 'way of life' which legitimates a view of the lawyer as superior, and is clearly supported by the students' talk as described in Chapter 6 Section IIB.

²⁴ Hall, above n 7, 6.

²⁵ Glenn Jordan and Chris Weedon, *Cultural Politics: Class, Gender, Race and the Postmodern World* (1995) 14.

specifically to the various processes of meaning under construction within the discursive formation of ‘legal culture’.

III THE INTERSECTION OF LAW AND CULTURE – ‘LEGAL CULTURE’

The capacity for cultures to intersect is seemingly endless, limited only by the boundaries used to define specific entities. Although law is a relative latecomer to cultural studies, the last two decades have seen an exponential growth in the number of scholars who regularly ‘attend to the cultural lives of the law and the ways law lives in the domains of culture’.²⁶ Post contends that legal scholarship has finally come to believe that culture *is* the ‘precondition for the very possibility of human meaning’²⁷ and Sarat and Kearns argue that legal scholars have been encouraged by Geertz to ‘be attentive to the imaginative life of the law and the way law lives in our imagination’.²⁸ Perhaps this is supported by an understanding that law and culture are mutually constitutive. Thus, law should be treated as an active cultural reality²⁹ where the focus is on meaning and the way people make sense of their lives.³⁰ In this sense we can talk of a culture of the law as referring to the skills, techniques and knowledge, and the evaluative attitudes, values and norms, which characterise and define the parameters of the legal profession.³¹

It is argued that the discourses of ‘the law’ are multiple and varied. Although most commonly viewed as a body of texts, law is at the same time a discipline; a system that informs us how to interpret society; and a means of establishing and maintaining authority and power (in a regulatory, Foucauldian sense). Within such a seemingly boundless cultural artefact as ‘the law’, how can we come to understand the term ‘legal culture’? Just like ‘culture’, this too is a vague and amorphous term, and requires contextual clarification.

²⁶ Sarat and Kearns accredit this to the development first of critical legal studies, then the law and literature movement, and finally ‘with the growing attention to legal consciousness and legal ideology in sociolegal studies’: A Sarat and T Kearns, *Law in the Domains of Culture* (1998) 5.

²⁷ Post, *Law and the Order of Popular Culture* (1991) vii.

²⁸ Sarat and Kearns, above n 26, 6.

²⁹ Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (1983) 184, 218, 232.

³⁰ Post, above n 27, vii.

³¹ Roman Tomasic, *Lawyers and the Community* (1978) 118.

Cotterrell and Friedman have debated the understanding of the concept of legal culture and its function within a comparative sociology of law.³² Although this thesis has its focus on the microcosm of law students within legal culture and is not concerned with analytical frameworks for a comparative sociology of law, their discussion serves the chapter by illuminating a general understanding of the law in relation to cultural discourse. On various occasions Friedman has referred to legal culture as ‘the ideas, attitudes, expectations and opinions about law, held by people in some given society’³³ or ‘the attitudes, values, ideas, and opinions about law which people carry about inside their heads; and which, presumably, influence their behaviour’.³⁴ Everyone in society, he argues, has their own cluster of ideas and perspectives on various subjects, and legal culture simply refers to ‘those ideas and attitudes which are specifically legal in content – ideas about courts, justice, the police, the Supreme Court, lawyers and so on’.³⁵ It is the vagueness and lack of precision or rigour in such a definition that leads Cotterrell to question its theoretical utility as a concept.³⁶ He argues that the concept of legal culture seems to simultaneously explain too much while expressing very little. That is, while it seems to explain every aspect and happening of the legal system, it fails to appropriately explain anything specific. He contends that when everything gets attributed to legal culture such that it includes a vast array of indeterminable attributes, the notion of legal culture itself ‘fails to identify any particular factors that can be seen to be making a difference to the situation of law in society’.³⁷ Yet, one might easily make the same argument about the term ‘law’ – as a discursive formation there is much that

³² See Roger Cotterrell, ‘The Concept of Legal Culture’ in David Nelken (ed), *Comparing Legal Cultures* (1997) and Lawrence M Friedman, ‘The Concept of Legal Culture: A Reply’ in David Nelken (ed), *Comparing Legal Cultures* (1997).

³³ Lawrence M Friedman, *Republic of Choice: law authority and culture* (1990) 213. See also Lawrence M Friedman, ‘Is There a Modern Legal Culture’ (1994) 7 *Ratio Juris* 117, 118; Lawrence M Friedman, ‘Law, Lawyers, and Popular Culture’ (1989) 98 *Yale Law Journal* 1579, 1579; Lawrence M Friedman, *Total Justice* (1985) 31.

³⁴ Lawrence M Friedman, ‘Two Faces of Law’ (1984) *Wisconsin Law Review* 13.

³⁵ Friedman, above n 33 (1989).

³⁶ Cotterrell, above n 32, 14, 15.

³⁷ Ibid 20. He also spends considerable time arguing that ‘legal ideology’ is a more appropriate referent to the concept than legal culture, as it can be tied more specifically to legal doctrine: at 20. But Friedman rightly counters that both terms are equally vague and lacking in precision, and that the only distinguishing factor is their axis point. While the study of legal ideology is centred on doctrine, the study of legal culture finds its centre outside doctrine in the thoughts, wishes and ideas of members of society: Friedman, above n 32, 38.

it too could encompass. As stated earlier, the boundaries of law itself are very unclear and malleable, and yet difficulties in defining or delimiting a concept are no reason ‘for throwing the baby out with the bathwater’.³⁸

This chapter argues that there is indeed much utility in viewing legal culture as a set of practices and processes by which states of mind and meanings about law are constructed, because ‘these states of mind are affected by events, situations and the like in society as a whole, and they lead in turn to actions that have an impact on the legal system itself’.³⁹ Indeed, as will be shown in Chapter 4, viewing legal culture from a macro level as having a focus on meanings justifies the use of focus groups as a particular method for getting to the micro level meanings produced by law students within this discourse.

It is interesting to note that in both their descriptions of legal culture, Cotterrell and Friedman each recognise that social phenomena can be regarded in a general sense, not as a unity, but as an ‘overlay of currents of ideas, beliefs, values and attitudes embedded in, expressed through and shaped by practice’.⁴⁰ This conception of legal culture makes sense if we return to the discussion above regarding the meaning of ‘culture’ itself. If culture is a description of shared social life that particularly concentrates on meaning, then a notion of *legal* culture could be seen as encompassing those practices and processes that facilitate the overlay of ideas and values unique to the field of law. That is, legal culture can be seen as the discourses that bring the law into being as something meaningful. Taking this even further, as law is a quotidian aspect of the social experience and ‘is inseparable from the interests, goals, and understandings that deeply shape or comprise social life’,⁴¹ it seems entirely appropriate to argue that the discourses of legal culture actually comprise more than just the attitudes, ideas and opinions about the law that are held by members of society.⁴² Rather legal culture can be seen as the *production*,

³⁸ Friedman, above n 32, 33.

³⁹ Ibid 35.

⁴⁰ Cotterrell, above n 32, 21.

⁴¹ Sarat and Kearns, above n 26, 6.

⁴² Friedman’s definition is that legal culture is comprised of the general public’s ideas, attitudes and opinions that are legal in content: see Friedman, above n 33 (1989), 1579. Others have also utilised this

interpretation, transformation and exchange of these meanings and the contribution they make to the discourse on lawyers and legal meaning generally.

This view of legal culture fits nicely within the ‘circuit of culture’ paradigm outlined by du Gay, et al. They argue that in the study of a cultural text or artefact, it is necessary to recognise that the processes of representation, regulation, production, consumption and identity form a circuit, rather than a sequential process, where each moment in the circuit is inextricably tied to the others.⁴³ Studying legal culture (and specifically student responses to popular culture), thus involves analysing the way law is variously represented; the ways in which students consume law; recognising law’s mode of production and distribution; and focusing on the social identities with which law will associate. Viewing legal culture as a site of meaning contestation, production and exchange is an acknowledgement that these moments do comprise a circuit of culture.

Accepting this circuit as applicable to law is an important evolution of the concept of legal culture, because rather than referring simply to the static ideas and values about law held by people at a given point in time, the concept is seen as a dynamic and energising force where members of that culture are involved in active social transformation. Rather than denoting a temporal snapshot of the beliefs and practices of its members, the dynamic legal culture involves an active exchange of meaning that provides for the explanation of the law and culture relationship as a social phenomenon.

Which individuals then are part of this dynamic ‘legal culture’? Embracing the above definition means that *any* member of society can contribute to the legal culture, whether legal professional or layperson.⁴⁴ Quite obviously, multiple social groups will be constructed in various discourses about the law (for example, legal professionals, the general public and law students) and will utilise different ‘texts’

understanding or referred to it in similar ways: see David Ray Papke, ‘Law in American Culture: An Overview’ (1992) 15(1) *Journal of American Culture* 3.

⁴³ Du Gay et al, above n 5, 3; Kathryn Woodward (ed), *Identity and Difference* (1997) 2.

⁴⁴ Certainly Friedman in his definition of legal culture refers specifically to ‘members of the public’ without privileging the lawyer over the layperson. It is only later (as will be discussed) that Friedman acknowledges the different involvements of each of these two groups within legal culture.

and different levels of power as their *modus operandi*. To illustrate from the extremes, a lawyer will be quite specifically imbricated within the legal culture via his or her frequent interaction with the traditional body of legal texts which make up ‘the law’, while in contrast, those in society who are not legal professionals will mostly participate in the cultural aspects of the law via less culturally authoritative means – for example, through popular cultural forms such as television, movies and literature.⁴⁵ It is interesting to note that in much legal scholarship only these two aspects of legal culture are discussed – the lawyer and the non-lawyer, or legal professional and the public. Yet legal culture does not have readily identifiable boundaries:

Professional and lay legal cultures differ ... we should not expect to find a single coherent legal culture at a place or in a nation. We should not be surprised to discover that legal ideas differ as we consider class, gender, race, region, religion and the amount of direct experience people have with police officers, administrative agencies or courts.⁴⁶

While it could be said that no two people (whether lawyer or not) would have the same ideas and values about law, it is argued here that there it is possible to follow patterns in their distribution. Although often couched in dualistic language denoting ‘internal’ and ‘external’ legal culture,⁴⁷ it is preferable to discuss these differentiated aspects of legal discourse via the notion of professionalism. That is, it could be argued that popular culture serves as a site of intersection for law as a profession and

⁴⁵ Unless, of course, they encounter the law as a result of their social, civil or criminal activities – that is, as clients.

⁴⁶ Stewart Macaulay, ‘Popular Legal Culture: An Introduction’ (1989) 98 *Yale Law Journal* 1545, 1547.

⁴⁷ In their debate over definitions, Friedman and Cotterell have also argued over divisions within legal culture. Cotterell criticises what he has termed a duality of legal culture within Friedman’s definition, that is a differentiation between the legal culture of those within a legal fraternity – the ‘specially important’ ‘internal’ culture of legal professionals; and the legal culture of those outside that community – ‘popular’, ‘lay’ or ‘external’ legal culture: Cotterell, above n 32, 17. Cotterell argues that this sociological relationship between internal and external implies diverse unities set against one another and that this renders the concept of a unified legal culture impossible: at 18. But Friedman’s answer is that in distinguishing between internal and external legal culture, his intention was simply to show that there inevitably will be differing variances and tendencies within legal culture and that it should be no surprise that, as a group, legal professionals play an important role when compared with the legal culture of others: ‘Would it be such a wild idea to suggest that the attitude of doctors towards diseases and illness, towards health care plans and the like, has an importance in the politics of medicine, or in ‘medical culture’, beyond that of a random sample of the population?’: Friedman, above n 32, 36.

institution (which is itself a discourse and practice) and non-professional legal discourse, with members of both groups participating equally. The discourses of law as constructed in popular culture therefore help to mark out the boundaries of legal professionalism, and so within this context it becomes crucial to understand the role of popular culture in the process of meaning-making about the law.

A Popular Culture

Conceptually, popular culture is not a fixed category. As discussed earlier, the traditional view of culture encompassed the various art forms of 'high' culture favoured by the intelligentsia. This meant that 'popular culture' was left to denote residual cultural forms where it was to 'accommodate cultural texts and practices which fail to meet the required status to qualify as "high" culture'.⁴⁸ Alternatively, but equally pejoratively, popular culture was also viewed as mass culture – a formulaic and manipulative capitalist approach to consumerism, where audiences were seen as non-discriminating and brain-numbingly passive.⁴⁹ However, with the cultural studies movement over time encouraging the view of culture as anything meaningful, a positive conception of popular culture is now at work, where it is both valued and critically analysed.⁵⁰ This definition firmly articulates a difference between the way mass culture and popular culture are evaluated. That is, while mass culture is a pejorative and elitist judgment based on an alleged inherent aesthetic quality, the evaluation of popular culture is positive and recognises it as a political site of consent and resistance in the wrestle over cultural meanings.⁵¹

While there is no denying the nature of commercial production in popular culture, it is commonly argued that, rather than being standardised and forced to conform in their interpretation and reception, audiences bring to bear their own cultural

⁴⁸ John Storey, *An Introductory Guide to Cultural Theory and Popular Culture* (1993) 7.

⁴⁹ Ibid 10.

⁵⁰ Chris Barker, *Cultural Studies: Theory and Practice* (2000) 47.

⁵¹ See also Storey, above n 48, 13 and Hall's various works, for example Hall, above n 7; S Hall, 'Encoding/Decoding' in S Hall et al (eds), *Culture, Media, Language* (1981) Barker notes that this 'argument reverses the traditional question of "how does the culture industry turn people into commodities that serve its interests?" in favour of exploring how people turn the products of industry into their popular culture serving their interests': Chris Barker, *The Sage Dictionary of Cultural Studies* (2004) 148.

competencies and discursive resources in order to construct their own meaning in relation to these products. Thus, popular culture can be seen as providing a place of struggle over discourses and, consistent with this chapter's definition of culture and legal culture, it is regarded as 'the meanings and practices produced by popular audiences at the moment of consumption'.⁵² It is argued that popular culture is diverse in its offering of symbols, artefacts and objects which can be interpreted by each individual and, unlike mass culture, does not impose reactions or erase values through an unreflective homogenisation.⁵³ Popular culture provides an opportunity for a reflectively active response in the exchange of meaning, and this is what makes audiences such an interesting focus of study. In this way, a study of law students' uses of popular cultural texts is a meaningful and valuable focus within an exploration of law's various discourses. As the discourse of law in popular culture competes with other discourses of law (official or otherwise), students use popular culture as an arena for competing ideas over regimes of truth. It is a place where they can fight over the map of meaning and question issues of classification and power.

B *Popular Legal Culture*

Despite this contemporary understanding of popular culture as a site of struggle over meaning, it is common in arenas outside cultural studies for the concept of popular culture to metonymically represent the texts of media culture,⁵⁴ whether in print, music, television or film. Correspondingly, representations of legal processes and events within these media (for example John Grisham novels, *Law & Order*, and *12 Angry Men*) are often collectively referred to as 'popular legal culture'. While this may appear as relatively natural, to describe texts in this way is actually limited and misleading as it neglects the existence of a 'more complex analysis of the ways legal culture is produced, and popular understandings of the law shaped'.⁵⁵ It is argued that these texts would be better described as *legal* popular culture, therefore simply

⁵² Barker, above n 50, 47.

⁵³ D Strinati, *An Introduction to Theories of Popular Culture* (1995) 35, 40.

⁵⁴ Margaret Thornton, *Romancing the Tomes: Popular Culture, Law and Feminism* (2002) 6. She argues that the term *popular* culture should instead be taken to encompass the 'panopoly of beliefs, practices and wisdom of ordinary people'. See also Friedman, above n 33 (1989).

⁵⁵ Barbara Yngvesson, 'Popular Legal Culture: Inventing Law in Local Settings: Rethinking Popular Legal Culture' (1989) 98 *Yale Law Journal* 1689, 1690.

referring to a body of popular cultural texts that represent the varying aspects of the law.

In contrast, the term *popular* legal culture should involve much more than denoting a series of texts about law that are in a form well received by the general public. Congruent with the definition of culture (and legal culture) being utilised in this chapter, popular legal culture must embrace the production, transformation and exchange of meaning among members of the public in relation to the law. It is through watching or reading various representations of the law within popular cultural ‘texts’ that the public is able to gain access to the discourses of the law – that is, to the practices and processes of meaning-making within legal culture.

This approach to popular legal culture was one of two definitions put forward by Friedman,⁵⁶ and he argues that its use is crucial for constructing social theories of law. A study of popular legal culture in this more contextual sense provides the intervening link between that which is social, and legal events and processes. By recognising the subjectivity of the interpretive process and the exchange of meaning that occurs in the interaction between the social and the legal, it is important to place value on the sources of knowledge about law that have traditionally been seen as ‘non-legal’. This approach to popular legal culture rejects legal autonomy⁵⁷ and recognises that lawyers and ‘non-lawyers’ alike are both carriers of and contributors to differentiated aspects of legal culture. Popular legal culture therefore provides a fascinating avenue through which to explore the level of student interaction in their transitional state, amid the various discourses of the law.

Approaching popular legal culture from this position places importance on the transformative process of law studies. As a particular cultural aggregate, law students in their early academic careers form a rich and complex micro aspect of legal

⁵⁶ His first definition was the more narrow reference to cultural texts, ‘specifically to those works of the imagination whose intended audience is the public as a whole, rather than the intelligentsia’: Friedman, above n 33 (1989), 1579.

⁵⁷ By treating the boundaries between the legal and social as flexible and somewhat porous, it is easy to recognise the myth of legal autonomy – that is, the ‘fiction’ that law can only be explained or interpreted by reference to the internal. The law must not seek to ‘immunise itself from that which has been constituted as quotidian and mundane within the social script’: Thornton, above n 54, 18.

discourse, and comprise a cluster of attitudes, values and social actions that can be ethnographically explored in order to produce Geertz's 'thick description'.⁵⁸ The next section therefore precedes a discussion about methodology in Chapter 4 by outlining the connections between popular legal culture and the first year law student's transformation of identity.

IV THE TRANSFORMATIVE PROCESS OF FIRST YEAR LAW AND THE DEVELOPMENT OF IDENTITY

The ways in which we act and experience ourselves are shaped by the social environment within which we exist and our relations with others. We are defined and define ourselves in terms of how others see us, how we see others, how we act with other people and how other people respond to us, not only on an individual basis but also within social institutions such as the family, the workplace, the school. Equally, the ways in which we are able to act, respond and see ourselves may be shaped by the material and economic circumstances of our environment.⁵⁹

The specific local culture we inhabit will inform and challenge our interaction with other parts of the wider culture. The complexity of a law school education is no exception. As discussed in the previous chapter, the first year law student is uniquely placed at the site of intersection between law, fiction and society,⁶⁰ where competing discourses are juxtaposed or played against one another. By virtue of this position within the law school setting, they become immersed in a 'heady, seductive brew of personal and social influences'⁶¹ and participate in a slippage across discursive boundaries. Law school, like any institution, has a regime of truth made up of the discourses of law – that is, it has regulated and disciplinary ways of speaking about the law – and popular cultural forms such as television programs also produce discourses about elements of the law. As law students observe the practices of lawyers on television, in movies and in literature, they are simultaneously interacting

⁵⁸ Geertz, above n 13.

⁵⁹ Giles and Middleton, above n 16, 37.

⁶⁰ See Figure 2.1.

⁶¹ Andrew Goldsmith, 'Warning: Law School Can Endanger Your Health!' (1995) 21(2) *Monash University Law Review* 272, 278.

with traditional legal discourses and it is this dual involvement that ensures an active challenging and interpretation of meaning takes place.

Recognising that law students are in this transitional position places importance on the role of the law school through which students navigate this journey of meaning-making and exchange. Law students enter an environment where they are required to understand themselves and their own cultural values within the context of actively engaging with what appears to them to be a new culture. This learning of a new culture is usually seen as involving the transmission of norms and values within a given culture, but Giddens suggests that 'although the existing culture is instilled in individuals through the socialisation process, these same individuals contribute to the changing nature of this reality through their daily lives'.⁶² As Laster has argued:

By acquiring communicative and behavioural competence in the new culture [they] are able to operate comfortably as both 'insiders' and 'outsiders'. Cultural competence gives us the capacity to appreciate and also to regard both cultures with a critical eye.⁶³

Crucially, it is within their first year of law school that students will learn to cast this critical eye on all elements of legal culture. Rather than undergoing passive socialisation, the students' transformation is thus an active interaction and response to various discursive practices and processes. As the embodiment of the intersection between law and culture, the law student is imbricated in the struggle over various meanings within legal culture. Law school becomes a site where the competing discourses of law are contested and the transformative process of first year law students therefore provides a fruitful means of accessing various discursive aspects of popular legal culture.

Likened in the previous chapter to an extreme makeover, the transformative process of first year law provides a myriad of circumstances where students are subjected to the dynamic forces of legal culture. These situations test students' understandings and

⁶² Warren Kidd, *Culture and Identity* (2002) 18, quoting Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (1984).

⁶³ Kathy Laster, *Law as Culture* (1997) 342.

force them to actively interpret and produce meanings. In this way their perceptions, values and ideas can be refined and transformed through an interaction with both professional and non-professional legal discourses. That is, law school provides the opportunity through which students can construct an understanding of, and in their own way contribute to, legal culture.

As students at law school are therefore constructed in various discourses about the law, a focal interest of this research is that moment of 'identity' within the 'circuit of culture'. As will be argued below, identity is constituted by discourses with which students will identify or not. What is fascinating about this transformative process from a cultural point of view is exploring what discourses the students are manifesting when they speak. That is, what discourses are students deploying and/or resisting, and what are the consequences of this for the construction of legal identity?

A Identity

Gaining momentum in the 1990s as a central category within cultural studies, the concept of identity is concerned with cultural descriptions of persons and explores 'how we came to be the kinds of people we are, how we are produced as subjects, and how we identify with (or emotionally invest in) descriptions of ourselves as male or female, black or white, young or old'.⁶⁴ Identity then, is a culturally specific production that draws on discursive resources from culture for its formation. But how is it located, and can it be isolated?

Often the search for identity is based on an essentialist notion that identity is fixed as a universal essence of the self and expressed through symbolic representation. Here 'identity is regarded as the name for a collective "one true self" and is thought to be formed out of a common history, ancestry and set of symbolic resources'.⁶⁵ Because this view of identity is based on the assumption that social categories reflect an essential underlying identity, it would mean that it would be possible to locate the

⁶⁴ Barker, above n 50, 11.

⁶⁵ Chris Barker, "'Cindy's a Slut': Moral Identities and Moral Responsibility in the 'Soap Talk' of British Asian girls" (1998) 32(1) *Sociology* 65, 66. See also Timothy L Hall, 'Moral Character, the Practice of Law, and Legal Education' (1990) 60 *Mississippi Law Journal* 511.

essence of, say, lawyer or non-lawyer identity based on similarity of experience (for example, the study of law or practice within the legal profession). But an essentialist argument is problematic because there are many divergent aspects of what it means to be a lawyer that diversify the assumed similar experience of lawyering. That is, to be a female lawyer is not the same as a male lawyer. Nor is being an indigenous Australian lawyer the same as a being a Canadian-born Australian lawyer.

Thus, cultural studies scholars question whether it is possible to speak of the existence of a true self or ‘essence’ as something that we inherently possess and therefore can become known to us.⁶⁶ Instead, they argue that identity is best described as an emotionally charged description rather than a timeless entity. This is the basis of the anti-essentialist position, which stresses that identity is a process of becoming, built from points of similarity *and* difference:

[C]ultural identity is not seen as a reflection of a fixed, natural, state of being but as a process of *becoming*. There is no essence of identity to be discovered, rather, cultural identity is continually being produced within the vectors of similarity and difference. Cultural identity is not an essence but a continually shifting position and the points of difference around which cultural identities could form are multiple and proliferating. They include, to name but a few, identifications of class, gender, sexuality, age, ethnicity, nationality, political position, ... morality and religion, and all of these discursive positions are themselves unstable.⁶⁷

From this perspective, identities are social constructions that are relational (dependant on symbolic markings of one group as different from another – you cannot be a lawyer and a non-lawyer) and contingent upon time, circumstances and place, rather than being permanently fixed.⁶⁸ The meaning of identity categories, for example being a lawyer, is therefore said to be subject to continual change and ‘since meaning is never finished or completed, identity then becomes a “cut” or a snapshot of unfolding meanings’.⁶⁹

⁶⁶ Giles and Middleton, above n 16, 36.

⁶⁷ Barker, above n 65, 66.

⁶⁸ Giles and Middleton, above n 16, 34: ‘They depend upon what they are defined against, and this may change over time or be understood differently in different places’.

⁶⁹ Barker, above n 51, 94.

B The Identity Project and Transformation

In recognising the role of the individual in textual interpretation and the negotiation of socially shared and contested meaning, it is important to understand the connection between self-identity and transformation. Referring to the way in which we think about ourselves and construct and sustain narratives about the self, the concept of self-identity can be understood as a reflexive and discursive construction of self, or as a story about the self. Connecting the discursive outside with an internal subjectivity, ‘identity represents the processes by which discursively constructed subject positions are taken up (or otherwise) by concrete persons’ fantasy identifications and emotional “investments”.’⁷⁰

The unique transitional position that law students occupy in their first year provides great potential for transformation and development of self-identity. Placed at the intersection of law, society and popular culture, these students can be reflexively involved with a continuous biographical project of self-identity, where they are attempting to answer critical questions of how to act, what to do, and who to be.⁷¹ A student’s identity narrative is therefore an attempt by the individual to form what Giddens has referred to as a ‘trajectory of development from the past to an anticipated future’.⁷² In this sense, Giddens’ notion of ‘identity projects’ best describes the continuous process of identity construction:

An identity project builds on what we think we are now in the light of our past and present circumstances together with what we think we would like to be, the trajectory of our hoped-for-future.⁷³

The transitional and transformative stage of first year law signals the beginning of students’ self-identity projects in the context of their involvement with the law. Building on what they perceived, believed and felt in the past, and drawing from the

⁷⁰ Ibid 94, 181.

⁷¹ Barker, above n 50, 167.

⁷² Anthony Giddens, *Modernity and Self-Identity* (1991) 75.

⁷³ Barker, above n 50, 167.

experiences of the present, the identity project forms a trajectory of their desired future as lawyers. In recognising this process of discursive construction, it is important to place value on the transformative stage that students will experience in their first year of law school. By talking about what it is they value, and 'about how matters of value are shared and disputed in the world we inhabit with others',⁷⁴ students will be pushed to evaluate, defend and sometimes reconstruct their self-identity in relation to the way they view the world of law.

The identity project is therefore inextricably linked with transformation. Legal education offers each individual the opportunity to acquire the practices, beliefs, skills, knowledge and dispositions that are characteristic of the culture of which they are a part.⁷⁵ The law school culture invites the students to construct a legal identity that 'will not only govern his activities in professional situations but will also affect the way he interprets the more general social reality'.⁷⁶ Doubtless, the discourses of law school will have a role in shaping student understanding of what is important and not important to being a lawyer,⁷⁷ and therefore law school should not be seen as simply a place where a legal curriculum is offered, but as

a very powerful and insistent social environment. This environment demands – often without saying so – that students not only learn but also change. Change not only their ways of thinking but also their understanding of their values, their sense of what is meaningful, and the social obstacles that limit what is possible.⁷⁸

It is also helpful to recognise that the law school culture does not just contribute to the biographical aspect of the identity project. The 'identities that individuals adopt in order to define themselves, are produced, at least in part, from the cultural and social

⁷⁴ James R Elkins, 'Lawyer Ethics: A Pedagogical Mosaic' (2000) 14 *Notre Dame Journal of Law, Ethics & Public Policy* 117, 127–9.

⁷⁵ J S Western and D S Anderson, 'Education and Professional Socialisation' (1968) 4 *Australian and New Zealand Journal of Sociology* 91, 91.

⁷⁶ *Ibid* 97.

⁷⁷ Howard Lesnick, 'Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum' (1990) 37 *UCLA Law Review* 1157, 1159.

⁷⁸ Frank Pommersheim, 'Voice, Values, and Community: Some Reflections on Legal Writing' (1988) 12(4) *Legal Studies Forum* 477, 480.

contexts in which we find ourselves'.⁷⁹ This means that adopting a legal identity will depend not only on the cultural competencies the individual brings to the identity project (self-description), but also on elements of social ascription. That is, collective social identities are 'important ways in which people negotiate a sense of belonging, and often allied to this, political solidarity'.⁸⁰

Thus, law students are developing identity through the social and material conditions of both a legal and non-legal world. While 'being' a lawyer can never be one thing (it will carry competing and contradictory meanings and emotions), institutions provide ready-made definitions of identity, offering particular meanings as natural, inevitable or desirable.⁸¹ Both the learning and practice of law is demarcated early in legal education as occupying a special place of responsibility in society, and the institution of law school often ensures that '[e]ntrance into this interpretive community is premised on the mastery of the legal conversation that animates and defines legal practice and structure'.⁸²

Yet there is hope – an exciting hope that is evident in this research. Law students are in a transformative position within first year that enables them to take part in an active process of shaping legal identity by accepting or resisting pre-set institutional definitions. Identity is negotiable within the law school setting because first year students are manifested in multiple discourses, and are shifting and changing between them. That is, as individuals they are constructed in a social process where each will have discursive access to different cultural resources.⁸³ Occupying a space at the intersection of law, society and fiction, the students are using these sometimes complementary, sometimes competing discourses as contributors to their identity projects. On this basis, it is reasonable to expect that there may be contradictions in what the students say as they articulate the construction of identity while it is occurring.

⁷⁹ Giles and Middleton, above n 16, 30.

⁸⁰ Ibid 45.

⁸¹ Jordan and Weedon, above n 25, 16.

⁸² Pommersheim, above n 78, 478 citing Stanley Fish, *Is There a Text in This Class?* (1980).

⁸³ Law students will at different times live a range of subject positions centred around work, family, class, gender, race and sexuality because our cultural competencies are derived from within specific cultural contexts.

Indeed, identities are contradictory, they cross-cut or dislocate each other so that no single identity acts in an overarching organising capacity. Rather, identities shift according to how subjects are addressed or represented.⁸⁴

It is this shifting, dislocation and merging of identities that is an exciting and integral part of the first year transformative process. Students are active in the process of taking up subjective positions that help ‘to constitute the emotions, the subconscious and unconscious dimensions of the individual. Assuming the position of a thinking, speaking, signifying subject involves attributing meaning to experience’ and opting for one form of identity over others.⁸⁵

V CONCLUSION

In this chapter I have interpreted legal culture as a mixture of social phenomena, each ‘shaped by local knowledge and practice, through which symbols such as “law” or “court”, understandings of “rights” and “wrongs” ... [would] take on particular, locally relevant meanings’.⁸⁶ In this way, legal culture is not only differentiated, but enables law to be ‘variously interpreted, negotiated, or transformed in local settings’.⁸⁷ In conjunction with this interpretation of legal culture, I have also defined the notion of ‘popular legal culture’ to refer to the production, transformation and exchange of meaning about law. Students in law school are part of this dynamic popular legal culture as they participate in a cultural exchange of ideas and perceptions about lawyering.

⁸⁴ Barker, above n 65, 66–67.

⁸⁵ Jordan and Weedon, above n 25, 17–18. Although, the ‘degree to which individuals can “choose” forms of identity is circumscribed by social power relations. In racist societies, for example, the subject positions open to Black people are often those defined by White institutions and it tends to be extremely difficult to escape hegemonic definitions of what it means to be “Black”’: at 17–18.

⁸⁶ Yngvesson, above n 55, 1690.

⁸⁷ Ibid 1690.

The early years of law school are ‘rooted in a radical personal and professional transformation’.⁸⁸ This process involves learning and interpreting new discourses, yet it also involves a good deal more that goes to the core of personal identity. In this chapter I have argued that law students are drawing on, among others, the discursive resources of both law and popular culture to invest in legal identity. In this sense, identity is described as a cultural process of becoming that is social and self-descriptive. As will be elaborated in the next chapter, it is through students’ talk which is constitutive of identity that first year law students negotiate shared understandings about how to carry on in the world of law. For this reason I have further argued that students’ identity projects are intimately connected with transformation. Legal education should therefore not necessarily only be about providing the tools for students to correctly apply the law or solve problems, but rather it should also focus on helping them to develop an awareness of self, in order that they will be able to negotiate the various discourses they are encountering. As later chapters will show, legal education could better prioritise teaching students to develop personal frameworks in which they can have confidence for decision-making, reasoning and evaluation of what they are learning, both in and out of law school.

This thesis empirically considers the ways in which law students, through their discussions and interactions with popular culture (among other influences), reproduce institutional understandings of lawyers or the law and at the same time challenge them with claims that reflect different positions about law, ethics and justice. It posits that the first year of a law degree is a period of transformation in which a student’s legal identity and ethical sensitivity and commitment are subject to construction.

⁸⁸ Pommersheim, above n 78, 477. Pommersheim argues that this transformation is often disorienting and dispossessing for law students as they are wrenched from the stable, emotional and moral groundings they once knew: ‘Their common language of discourse is stripped away and replaced with the baffling lexicon of case analysis – facts, issues, rules, holdings, reasons. It is a puzzling vocabulary unhinged from any apparently meaningful connection with ordinary experience’. The dynamic between the communal affairs of legal education and practice ‘creates a good deal of pressure on the new law student to understand and to capitulate to these processes of change that condition acceptance into the legal community’: at 478–479.

CHAPTER 4

METHODOLOGY

I INTRODUCTION

As I have argued in the previous two chapters, the relationship between law and television studies has largely been overlooked in Australia, and in exploring the boundaries of this relationship I have been seeking to make connections between television fiction and student understandings. In particular, the focus has been on the meanings that are created among first year students in relation to lawyers on television and the identity that students are constructing in response to these transformed meanings.

These connections have been made via focus group discussions and individual interviews with a sample of first year law students at Wollongong University. Focus group discussions were conducted in order to explore how such students see themselves assuming the responsibilities of a lawyer, now and in the future. The collection of this data is explained and justified in this chapter.

This chapter will provide explanations of the methods and theories that underpin the analysis presented in Part II. To that end, Section II describes the assumptions of a qualitative approach to exploring student perceptions, explaining why it is the preferred method for this project. Drawing from cultural studies, Section III outlines the active audience paradigm that forms the theoretical basis for the analysis. Although the specific steps taken to code and analyse the students' talk will be addressed in the next chapter, here it will be argued that an interpretive approach based in hermeneutics (using coding strategies) combined with critical discourse analysis enables rich and dynamic analysis to be developed. Having explained the need to see the student discussions as the site for the active construction of meaning, the chapter then turns in Section IV to a discussion of the use of focus groups in this research. In particular, it outlines the use of a pilot study to ascertain the most

appropriate method (interviews or focus groups) for exploring the transformation of meaning among law students. From this discussion, the chapter finally moves in Section V to an explanation of logistical aspects of the study, including a discussion of how students were recruited and the obstacles faced in conducting such a study.

II A QUALITATIVE APPROACH

In exploring the intersection of law and television studies at the point of analysing student understandings, this research draws heavily on cultural studies theory. As a diverse and eclectic field of inquiry, cultural studies provides varying methods for textual analysis. Although the research presented in this thesis draws on several methods for data collection and analysis, each has a particular grounding in qualitative methodology aimed specifically at exploring cultural meaning and understandings.

Qualitative methodology enables researchers to access the rich and complex processes that comprise an individual's lived experience. That is, by exploring the discursive constructions of experience it is possible to make some sense of the ways in which law students see the legal world and their place within it. Qualitative methods identify and describe the complexity of social phenomena and break open for inspection underlying perceptions and expectations:

one cannot understand human actions without understanding the meaning that participants attribute to those actions – their thoughts, feelings, beliefs, values and assumptive worlds; the researcher therefore needs to understand the deeper perspectives captured through face to face interaction.¹

Qualitative methods place a particular focus on the participant's frame of reference. As a system of representation, the visual medium is one of the key practices by which this frame of reference can exchange and produce meaning. The concern in this research is to explore through student discussions the links between representation,

¹ C Marshall and G B Rossman, *Designing Qualitative Research* (3rd ed, 1999) 57.

meaning and culture, and to investigate the understandings shared by a particular group. As discussed in Chapters 2 and 3 however, representations only become meaningful through discourse, and the task of this research has been to explore how legal discourse is constituted and challenged by law students as they talk about television lawyers and construct their legal identities. A qualitative research basis can concentrate on the details of this particular social existence and seek to explore its cultural activity in context. The use of qualitative methods in this research is therefore based on a theoretical framework that is concerned with the way individuals make sense of and construct identity through their articulations.

A The Benefits of Ethnographic Methods

As ‘watching television is a socially and culturally informed activity which is centrally concerned with *meaning*’,² the limitations of quantitative methods in analysing the phenomenon of watching television are well established, with statistical techniques seen to have a disaggregating effect on the exploration of such a complex activity.³ Watching television must be seen as ‘inevitably enmeshed with a range of other domestic practices and can only be properly understood in this context’.⁴ Indeed, Morley argues that a broadly ethnographic perspective will avoid such context isolation and assist in providing ‘thick description’ of the complexities of this activity.⁵

With ethnography an empirical and theoretical inheritance from anthropology, the qualitative concern is concentrated on details of life while connecting them to wider social processes and existence. As Barker has argued, ‘in the context of media oriented cultural studies, ethnography has become a code-word for a range of qualitative methods, including participant observation, in-depth interviews and focus groups’.⁶ He remarks that these data collection techniques reflect the ‘spirit’ of

² Chris Barker, *Cultural Studies: Theory and Practice* (2000) 269.

³ D Morley, *Television, Audiences and Cultural Studies* (1992) 173.

⁴ Ibid.

⁵ Ibid. As discussed in Chapter 2, ‘thick description’ is a reference from Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (1973).

⁶ Barker, above n 2, 28.

ethnography, which is based in a qualitative understanding of cultural activity in context.⁷ This further suggests that the data and analysis produced by qualitative research would be seen as arising from the circumstances of social existence and providing a richness of detail that is suited to tolerating the ambiguities, uncertainties and contradictions inevitable within a study of social existence.⁸

A qualitative approach best suits the purposes of this research because the process of constructing meaning is very difficult to capture by quantitative methods. That this is so can be illustrated by reference to a recent transnational study of which I was a part.⁹ It was conducted by law schools across six countries and utilised statistical analysis to evaluate student responses to a questionnaire. In seeking to investigate the impact films and television shows might have on the study and subsequent practice of law, first year law students from each of the institutions were surveyed in their first class:

In particular, the vexed issue of media effects informed the study—to what extent did law students draw their information and opinions from fictitious stories about law and lawyers in the movies or on television? Would it be possible to show that popular culture had influenced their opinions and would the results vary across the various countries?¹⁰

The quantitative methods used were thus aimed primarily at highlighting correlations between student backgrounds and perceptions of law and lawyers, and to examine the role of popular culture within these connections.¹¹ In achieving these aims, the transnational study was able to report that movies and television are quite helpful to law students in forming their opinions about lawyers, and that such students also have very strong opinions about lawyer trustworthiness and ethical standards.¹² Yet these

⁷ Ibid.

⁸ Martyn Denscombe, *The Good Research Guide for Small-scale Research Projects* (1998) 221.

⁹ This study is also discussed in Chapter 2 Section IID, and its results have been published as Michael Asimow et al, 'Perceptions of Lawyers - a transnational study of student views on the image of law and lawyers' (2005) 12(3) *International Journal of the Legal Profession* 407.

¹⁰ Ibid 409.

¹¹ Ibid.

¹² Asimow et al, above n 9. See Chapter 6 for an exploration of students' ethical identity articulations in the focus groups and Chapter 8 for a discussion on how to encourage ethical judgment within legal education.

statistical correlations cannot provide a deeper exploration of how students construct meaning about these issues in response to the television narratives, nor can they elaborate on how the forming of opinions can contribute to identity construction. Indeed, the transnational study itself recognises this limitation on quantitative work and commends any future research that would undertake the task of exploring the nature of popular culture's role in the construction of ideas surrounding law and lawyers.¹³

In taking up this challenge, the current research utilised qualitative methods to delve deeper into issues of student identity on the basis that they more easily provide for the examination of various social settings and the individuals who inhabit these settings. In this study, a main goal has been to explore the various ways in which students respond to and use television stories to construct identity, attitudes and expectations. As such, the primary method to gain access to this transformation of meaning has been the use of focus groups, conducted with first year law students. The central methodological aim was to present opportunities for new law students to talk informally about television lawyers and to explore from their perspective what it means to 'be' a lawyer. As a way of gaining insight into the transformed and shared meanings of students, focus group discussions of television lawyers provided a mechanism for students' story articulation and development in a mutually stimulative and spontaneously reactive environment. When students made comments within the groups on television lawyers' actions and motivations they revealed the stories that inform their views on lawyering. The focus group discussions about popular stories on television therefore provided an opportunity to access part of the transformative process first year law students are experiencing.¹⁴

In providing access to this transformative process, qualitative methods therefore allow the researcher access to students' shared (and contested) understandings and perceptions, and to how they structure and give meaning to their lives in relation to their future careers. 'The analysis of qualitative data allows researchers to discuss in detail the various social contours and processes human beings use to create and

¹³ Ibid 429.

¹⁴ As discussed in chapters 2 and 3.

maintain their social realities.’¹⁵ The choice of using focus groups and interviews¹⁶ in this research under the broad banner of ethnography was therefore based firmly on the rationale that a rich exploration into law student perceptions, understandings and expectations could not be adequately achieved through simply the ‘snapshot’ approach provided by quantitative surveys or questionnaires. Instead, the complexity of a student’s meaning-making process demands an in-depth approach to the ways in which law students draw on television legal dramas as part of their identity construction.

As argued in the previous chapter, identity is a description in language with which we are emotionally invested and is constructed from within discourse. When the students speak within the context of law school they are concomitantly constructing identity:

Within cultural studies, identities are understood to be discursive-performative. That is, identity is best described as a discursive practice that enacts or produces that which it names through citation and reiteration of norms or conventions.¹⁷

As they articulate, so they produce identity. In this way, focus groups become an appropriate method through which to explore identity as a discursive construction in relation to the intersecting disciplinary boundaries of law school and popular culture.¹⁸ Because of their transitional status within the intersection of law, society and fiction, first year law students are manifested in multiple discourses, or are at least shifting and changing between them, and it is therefore expected that not only may there be contradictions in what they say, but that they will be constantly transforming meaning and constructing identity. Within this context, the following discussion outlines the importance of reflexivity concerning the researcher’s role in interpreting the students’ transformation of meaning.

¹⁵ Bruce L Berg, *Qualitative Research Methods for the Social Sciences* (2001) 7.

¹⁶ Focus groups are different from individual interviews and will be individually discussed later in the chapter.

¹⁷ Chris Barker, *The Sage Dictionary of Cultural Studies* (2004) 94.

¹⁸ Interestingly, the social or intersubjective nature of identity development also lends itself to focus group methodology and will be discussed in further detail later in the chapter.

B *Representing the 'Natives': Issues of Reflexivity and the 'Self'*

Emphasising the importance of exploring how the members of a group or culture understand and attach meaning to things, ethnography is concerned to 'grasp the native's point of view' in relation to how they view the world.¹⁹ From a qualitative perspective the advantages to ethnography are therefore substantial. It provides access to the way members of a culture perceive their reality and to the way they attach meanings to their experiences. It aspires to develop and/or test theories and it can present holistic *descriptions* of the processes that underlie the social world as it naturally exists.

Yet in seeking these objectives it must be recognised that, just as the members of the group construct their social world, so too will the ethnographer's interpretation of this be a *construction*.²⁰ There is no way that this construction can be neutral or objective in order to describe things as 'they really are'.²¹ From within this 'interpretive maze we produce communicative and interpretative achievements [of television and television talk], but not a picture of "reality", for we are engaged in producing that reality'.²² That is, just as the law students' discussions are a discursive construction, so too is the description of this talk a result of the researcher's discursive interpretation. Inherent within ethnography then must be an acknowledgment of reflexivity:

¹⁹ B Malinowski, *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea* (1922) 25 quoted in Denscombe, above n 8, 69.

²⁰ Drawing on Giddens' use of the term 'double hermeneutic' Barker describes this process as involving the participants' interpretations and my interpretation of their talk: Chris Barker, 'Television and the Reflexive Project of the Self: Soaps, Teenage Talk and Hybrid Identities' (1997) 48(4) *British Journal of Sociology* 611; see further Anthony Giddens, *Modernity and Self-Identity* (1991); see also Chris Barker and Julie Andre, 'Did you see? Soaps, teenage talks and gendered identity' (1996) 4:4(November) *Young* 21, 23.

²¹ Note that this is the limitation (or some would argue impossibility) of realist epistemology: see further J Clifford and G Marcus (eds), *Writing Culture* (1986), which is a critique of the epistemology of ethnography from within ethnography.

²² Barker and Andre, above n 20, 23.

Ethnographers, like others, interpret social events and are an integral part of the social world they seek to describe. They have no super-human privileged understanding of the social world that is ‘objective’ and immune to the influence of past experience.²³

Thus, in relation to this particular study of law students, where the emphasis is on developing an understanding of the students’ perspectives and representing aspects of their identity development, it is acknowledged that the analysis itself can only be seen as a *construction* based on my interpretation of the data.²⁴

This research therefore acknowledges the reflexive nature of ethnography and does not attempt to merely provide a literal description or snapshot of student perceptions. As will be described in more detail below, this research is grounded in epistemological assumptions of audience research that recognise the individual’s active production and transformation of meaning within their cultural experiences. On this basis I reciprocally acknowledge that I can only make sense of student accounts using the conceptual tools as defined by my own cultural experiences.²⁵ Barker has remarked that ethnography should become ‘less an expedition in search of “the facts” and more a conversation between participants in a research process’.²⁶ He further describes the value in ethnographic data as giving ‘poetic expression to voices’ from various cultures allowing for the ‘continued redescription of our world’ to contribute to our understanding of the human condition.²⁷ This means that we can view ethnography as producing acculturated understanding, which thereby requires the researcher to acknowledge the inevitable influence of ‘self’ on the interpretation process. That is, if the analysis is to be shaped by the researcher’s own cultural competencies, then her assumptions, views and positions need to be made transparent.²⁸

It is within this context then, that I now divulge the experiences, background and personality that have predisposed me to this research. The oratory produced by

²³ Denscombe, above n 8, 74.

²⁴ The analysis can also be seen as a ‘dialogue’ with the students. See n 33 and accompanying text.

²⁵ Denscombe, above n 8, 73.

²⁶ Barker, above n 2, 29.

²⁷ Ibid.

²⁸ For a critique of ethnography along these lines, see generally Clifford and Marcus, above n 21.

television and film lawyers always inspired me and I was personally attracted to a study of law by the thought of developing such skills and the dreams of a lifestyle commensurate with them. As a law student I quickly realised that before achieving popular culturally inspired dreams, a great deal of hard work lay before me and I was soon disheartened. Indeed, as a clerk for a local suburban firm during the latter half of my study, this sentiment only grew. I believed that the images I had constructed for myself of practising law were not necessarily 'realistic' and after graduation it became clear to me that my passion for the law actually existed in research rather than practice. In the early stages of my academic career the impetus for this particular project was derived from my fascination with the process that my perceptions and expectations had undergone during my own legal education. I began to question why so many students in my classes were seemingly as idealistic as I had been, and why they too compared their law school experiences with legal practice on television. What is this process of transformation that causes students to develop certain expectations? Questions such as these were the inspiration for this project and my familiarity with this process, it can be argued, enables me to better understand and interpret the student's discussions.

The value of my shared experience can be further illustrated by recalling the arguments of the previous chapter about the nature of culture and discourse in relation to student action and response within law school. If it is remembered that within the law discourse functions to make sense of the social experience of the legal world²⁹ and that this is a particular window through which first year law students are able to act, speak and make sense of things,³⁰ then I too, as an academic member of this discursive community, draw on the discursive formations of law school in this way. As I have vigorously argued that discourse 'makes up or constructs identities and subjectivities, and defines the way certain things are represented, thought about, practiced and studied',³¹ I too share in the deployment of discourse to signify ways of

²⁹ J Fiske, *Television Culture* (1987) 14–15.

³⁰ Geoff Danaher, Tony Schirato and Jen Webb, *Understanding Foucault* (2000) 31.

³¹ S Hall (ed), *Representation: Cultural Representations and Signifying Practices* (1997) 6.

constituting, sharing and transforming knowledge and meaning within the disciplinary location of law school.³²

Put rather simply, as a past student and as a current academic member of the discursive formation of law school, I am able to participate in the students' shared language and culture. Of course, this is not to say that my culture or discursive involvement is the same as that of a first year law student – indeed, the biographical acknowledgement detailed above attests that this is not the case – but the conceptual maps of meaning³³ that I carry around as I interact with legal discourse are more easily shared with the students. By viewing culture as I have – a pattern of integrated behaviour and shared meaning-making processes of a social group reflected in the values, speech, action and ideals of the individuals – the connection between the students and myself via the shared processes of legal culture can be emphasised and appreciated. It is no small thing that my experiences of law school are similar to those of the students, nor that we are able to share in the processes of identity construction within the discursively bounded institution of law school. It means that I am able to participate in their dialogue. That is, while the students engage in conversations about their responses to television lawyers, rather than being distanced from it, I can more naturally take part in the conversation.

Having stressed the importance then of my connectedness with the students within legal discourse, it is still important to briefly acknowledge that the interpretive role also incorporates those aspects of my 'maps of meaning' that are not necessarily connected to legal culture. That is, I recognise that the combination of my personal experience as a law student and now as an academic, my Christianity, my gender and my personal interests in this project will have an impact on the interpretive nature of data analysis. In addition, my particular cultural role as an academic within the same institution as the participants had the potential to have certain influential effects on the data-gathering methods.³⁴ However, it is argued that while influential, these

³² Glenn Jordan and Chris Weedon, *Cultural Politics: Class, Gender, Race and the Postmodern World* (1995) 14. See also Michel Foucault, *The Archaeology of Knowledge* (1972).

³³ Hall, above n 31, 17.

³⁴ This is discussed further below where I outline my argument that any such negative effects did not occur.

factors of the ‘self’ are not a cause of any overt bias or one-sided reporting. There is nothing to be gained from desiring one interpretation over another in this particular research – it is being conducted simply to explore understandings of student perceptions and identity processes. However, it is acknowledged that my research only ‘makes sense’ within a particular historical and cultural context.

Indeed, this is what is at the heart of qualitative research. It is in recognising that interpretation is active and all part of the process of communication. Although there will be ways in which I do not share understandings with the students, there are also many ways in which I do have something in common with them, and this makes the research dispassionate but at the same time participatory. I am able to appreciate the nature of their transformative process, which gives me insights into the intricacies of legal education that others may not necessarily have. That is, the students and I are taking part in a conversation that explores and constructs meaning.

In the ways discussed above, I am implicated in the qualitative research I have conducted. Yet the active interpretive role of the researcher does not diminish the validity of the project:

Rather than a presumption that there must be, in theory at least, one correct explanation, it allows for the possibility that different researchers might reach different conclusions, despite using broadly the same methods.³⁵

It is a key strength of qualitative methods that holistic explorations focusing on processes and relationships can be interpreted as part of a context rather than describing an abstract concept in isolation.³⁶ Glaser and Strauss approach the analysis of qualitative data as quite distinct from purely descriptive studies that present such data ‘as found’, or as a snapshot of a social phenomena. They do not accept the notion that qualitative data can be left to ‘speak for themselves’.³⁷ Thus it is through the methodological explanations behind analytic choices and the constant checking

³⁵ Denscombe, above n 8, 221.

³⁶ Ibid 79.

³⁷ Ibid 215 referring to Glaser and Strauss, *The Discovery of Grounded Theory* (1967).

and progressive refinement of the analytic process that enables empirical research to be justified as a voyage of discovery.³⁸ Within this light, Section III devotes itself to an explanation of active audience theory as the basis upon which student discussions have been analysed.

III RESEARCHING THE TELEVISION AUDIENCE: THE ‘ACTIVE AUDIENCE’ PARADIGM

Enquiring into student responses to the representation of lawyers on television involves the exploration of textual generation of meaning in various contexts. Television is a text – a text that cannot be reduced to a single, fixed ‘meaning’ because meaning doesn’t inhere – it is polysemic – and the range of meanings it contains can be realised by actual readers as they come to the text.³⁹ The process of making meaning is largely interpretive and in terms of audiences, we cannot simply isolate a meaning that an audience will produce from watching a program. Rather we need to explore the meaning that is produced and transformed in the interplay between text and reader.

As ‘readers’ of legal television shows, students create and transform meaning. Barker argues that there is now enough work on television audiences within the cultural studies tradition to conclude 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’.⁴⁰ Focus groups are a way of gaining insight into this process of transforming and sharing meaning, and it establishes a mechanism for opinion formation. The focus group environment is mutually stimulative and encourages discussion, allowing points of view to be expressed in a spontaneous and reactive process of meaning-making. Every reader of a text *will* have a varied interpretation of the meaning they create about a particular

³⁸ Chapter 5 particularly outlines this analytic process.

³⁹ Barker, above n 2, 11.

⁴⁰ Ibid 269-70. Barker refers to McAnany and La Pastina, (1994) ‘Telenovela Audiences’, *Communication Research*, 21 (6).

text,⁴¹ and yet, to apply Hall's theory of culture within the institutional context of law school, students may be expected to exhibit the existence of shared meanings. According to Hall, an audience of law students would interpret and understand the function of law and lawyers in roughly the same ways, and be able to express their ideas in ways that would be understood by each other.⁴² For this reason, analysing the 'text' generated by the students' discussions in focus groups and interviews provides an opportunity to confront these shared meanings and to explore the interpretive framework within which the students transform their individual expectations of life as a lawyer.

The theoretical perspective that supports this ethnographic method is that of the 'active audience' paradigm. Based in cultural studies, it contends that audiences are not cultural dopes but instead are active producers of meaning from within a cultural context of their own.⁴³ It was developed in response to the assumption that watching television was passive in character 'with the meanings and messages of television unproblematically taken up by audiences'.⁴⁴ Watching television is seen as a cultural and social activity and despite some students admitting in the focus groups that they tune in to legal shows for pure entertainment, the active audience paradigm contends that the viewer does not receive images in a purely passive manner, but actively. Although authors may have a message or theme that they want to communicate viewers nevertheless decode the meaning for themselves and transform it through the use they make of it in their lives.

⁴¹ Barker, above n 2, 271. Barker argues that the reader will not merely reproduce textual meaning but will produce new meaning which is the result of the 'oscillations between the text and imagination of the reader'.

⁴² Hall, above n 31, 2. In Tamar Liebes and Elihu Katz, *The Export of Meaning: Cross-Cultural Readings of Dallas* (1993) Liebes and Katz also explore shared meaning in focus groups that have ethnicity as a commonality. The commonality in this paper's research is that of first year law students in Australia.

⁴³ Barker, above n 2, 269. Morley's extensive body of empirical work as evaluated and reconceptualized in Morley, above n 3, also centres on this notion of the active audience. 'It was also a reaction to a textual strand in cultural studies which implied that one could "read off" audience understandings from a close examination of the meanings embodied in television texts': Barker, above n 2.

⁴⁴ Barker, above n 2, cites the example of research that attempted to 'prove' that watching television had certain 'effects' on audiences.

Asimow has acknowledged strong empirical evidence that viewers constantly form opinions, attitudes and ideas that are based on material extracted from television, and more broadly popular culture;⁴⁵ and the transnational study, referred to earlier, indicated that law students are no exception.⁴⁶ The legal stories on television provide opportunities to contribute to an individual's expectations and attitudes in relation to lawyers. The various characterisations of lawyers in the show will convey certain messages that are transformed and renegotiated into ideas, attitudes and perceptions.

This research employs the active audience paradigm through the analysis of students' discussions in two main ways. The first is philosophically based in hermeneutics and concentrates on the interactive relationship between text and audience⁴⁷ whereby 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"'.⁴⁸ This perspective supports the use of focus groups because it recognises the individual transformative process and allows for the exploration of student interpretations of the television stories. It involves an interpretive literary analysis where the discussion or 'talk' becomes the text from which to unpack the understandings of law students. In this sense, the argument is not so much about *how* the television stories *influence* or *affect* understandings, as it is about the exploration of student responses to television lawyers and how this informs their legal identity construction. The value of interpreting this talk is not found in

giving an 'objective' and 'totalising' account of their lives or identity projects. Rather its value lies in exploring the resources of language, and the consequences of the specific organisation of discourse, which [law students] bring to bear.⁴⁹

⁴⁵ Michael Asimow, 'Law and Popular Culture: Bad Lawyers in the Movies' (2000) 24 *Nova Law Review* 533, 551. For further discussion of audience reception see S Livingstone, *Making Sense of Television: the psychology of audience interpretation* (2nd ed, 1998). See also David M Spitz, 'Heroes or Villains? Moral Struggles v Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers and the Legal Profession in Popular Culture' (2000) 24 *Nova Law Review* 725, 736 (arguing that all signals and images we experience have an impact on our subconscious and that fictional television has the inevitable effect of informing our psyche).

⁴⁶ Michael Asimow et al, 'Perceptions of Lawyers - a transnational study of student views on the image of law and lawyers' (2005) 12(3) *International Journal of the Legal Profession* 407.

⁴⁷ See also H Gadamer, *Philosophical Hermeneutics* (1977) and W Iser, *The Act of Reading: A Theory of Aesthetic Response* (1980).

⁴⁸ Barker, above n 2, 271.

⁴⁹ Barker and Andre, above n 20, 23.

As such, the transcripts of their text are seen as an interactive and social narrative transforms events and ideas into story.

The narrative consists of the cumulative effects of these separate stories as their aggregate meaning comes to light. By organising discrete stories and constructing their 'point', narrative ... represents one collective way of knowing things, one communal way ... [of] grasping the world.⁵⁰

The interpretation of this narrative provided by the students was therefore conducted using coding strategies aimed at exploring various themes and categories of issues relevant to the transformation of meaning among students.⁵¹ As narrative signifies a broad enterprise that involves both the reception and production of stories,⁵² it is a way in which law students actively experience transformation. That is, by discussing their responses to popular law stories they are learning about their own beliefs, values, dreams and fears,⁵³ and are mutually helping each other to give the legal world they are encountering some sort of meaning. The culture of law school allows for the communal generation and reproduction of meaning about law through the student's own storytelling. This synergy of storytelling in law is an element that Elkins relies on in his pedagogic use of legal fiction:

Stories take on a social or collective dimension. They show how we are both distinctive and share something with others. ... Stories define boundaries (which are the lifeblood of academic learning) and pull us together (across personal and social boundaries). Finally stories mediate the inner subjective world and the outer, objective world, the private and public aspects of our lives.⁵⁴

The law students' position at the intersection of law, society and fiction already gives them an involvement in storytelling and this is evident as they express to each other

⁵⁰ Jane B Baron and Julia Epstein, 'Is Law Narrative?' (1997) 45(Winter) *Buffalo Law Review* 141, 148.

⁵¹ The particular coding strategies will be outlined in the next chapter.

⁵² Baron and Epstein, above n 50, 147.

⁵³ It is in narrative, which 'suggests a whole world of experience', that we learn these things: James R Elkins, 'On the Emergence of Narrative Jurisprudence: The Humanistic Perspective Finds a New Path' (1985) 9(2) *Legal Studies Forum* 123, 135.

⁵⁴ Ibid 143.

and their teachers their values, concerns and understandings via stories. As they read, interpret and pursue the narratives around them during their time at law school, students begin a story production of their own, thus enabling them to make a place for themselves within various legal communities. This research shows that student discussions about television representations of the law are one of the opportunities we can seize upon to engender critical response to stories and encourage dexterity in the techniques of narrative persuasion.

In acknowledging the narrativity of the students' discussions, a second method has been used in this research to augment the hermeneutic analysis described above. Critical discourse analysis is a tool used 'to demonstrate the place of language in the constitution and regulation of cultures and cultural identities',⁵⁵ and acknowledges that the 'talk' of the groups is discursively constructed through language. This technique involves identifying a number of aspects of language that can be systematically identified in the data⁵⁶ to identify socially shared understandings and explore the occurrence of discourse as a constitutive part of its local context. In this sense, their talk is understood 'not as representing pre-formed ideas but as formative of them in the context of constructing and maintaining social relationships'.⁵⁷ Particularly for this research, discourse analysis is used to enrich understandings of how first year law students view themselves culturally, ethically and professionally, and to explore the identity that is constitutive of their talk. This research explores legal identity on the basis that it can be seen as 'a fluid accomplishment, instantiated in the procedural flow of verbal interaction',⁵⁸ and as the students discuss they reveal their participation in the infinite process of meaning production that is part of their continual negotiation within the legal world.

The particularities of these methods for analysing the data are more fully explained in the next chapter. Having argued however, that student discussions are a valuable resource in exploring transformation of meaning and the process of becoming in legal

⁵⁵ Chris Barker and Dariusz Galasinski, *Cultural Studies and Discourse Analysis: a dialogue on language and identity* (2001) 27.

⁵⁶ For example, rhetorical devices and linguistic elements: see Chapter 5.

⁵⁷ Barker and Andre, above n 20, 23.

⁵⁸ Sue Widdicombe and Robin Wooffitt, *The Language of Youth Sub Cultures* (1995) 218.

identity, the chapter now turns to an explanation and justification of how the data (student discussions) was collected.

IV RESEARCH DESIGN

The empirical research for this project was conducted in two instances: a pilot study and a primary study, both undertaken in 2002. This section of the chapter details how and why the research was undertaken at these levels. Importantly, it provides descriptions and justifications for key decisions in relation to the methods chosen, including sampling technique and the structure and setting for the methods. In seeking to explore the students' meaning-making processes in response to legal stories, it seemed that both semi-standardised interviews and focus groups would be much better tools for provoking discussion than quantitative methods. In order to identify which would be the most appropriate method for generating meaningful 'talk' among law students in response to television lawyers, a pilot study was conceived to test both the interview and focus group as data-gathering techniques.⁵⁹

A Pilot Study

The pilot study employed both methods of interviews and focus groups among a small number of students. It was conducted in the students' first session of the year in 2002 and consisted of two individual interviews, one interview with two participants⁶⁰ and one focus group of six students (10 students in total, three were male and seven female). This pilot, among ambitions of discovering and addressing weaknesses and inadequacies in the methods, was intended to identify if either or both of these data-gathering techniques were suitable for eliciting an adequate and useful amount of data. The pilot sample was adequate in size to provide an opportunity to evaluate the effectiveness of the chosen techniques in generating

⁵⁹ Apart from this exploratory testing of methods, it was always intended that unless a strong reason presented itself (such as the need to make major changes to the questions or format), the data collected from this pilot Study would be regarded as just as useful as any data produced by the primary study and thus would be fully incorporated into the project's final analysis.

⁶⁰ Because the discussion was more interactive and reactive between the two participants than it would have been with an individual interview, I have classified this interview as a focus group.

meaningful analysis for this particular research topic. The pilot study had further utility in checking the validity of the research questions and assumptions of the thesis against the data collected, enabling them to be refined for the primary study. The following discussion outlines the use of both the interview and focus group methods and provides a justification for the choice of focus groups in the primary study.

1 *The Interviews*

As a qualitative method, the interview provides maximum opportunity for a thorough communication of ideas between the researcher and respondent, and it is flexible enough to address the nuances of individuals as they express their responses and opinions in their own words. The choice to trial an interview approach in the pilot study was based on the rationale that it seemed to offer the researcher an opportunity to explore subtle personal responses and approaches from individual participants that might not be followed or even recognised in a focus group. As this research was grounded within both the assumptions of the active audience paradigm and the transformative process of the first year law student, the interview was seen as a potential mechanism for the exploration of the individual student's meaning-making processes:

The purpose of interviewing is to find out what is in and on someone else's mind. We interview people to find out from them those things we cannot directly observe.⁶¹

The interview structure used in this pilot was of a semi-standardised nature which involved asking a set of pre-determined questions in a consistent manner while still allowing for the flexibility and freedom to digress and probe into topics and themes that arose from the interview itself.⁶² Each interview lasted between 45 minutes and one hour, and facilitated the exploration of responses to television stories about lawyers in a comfortable face-to-face encounter. The following discussion will

⁶¹ T Greenfield, *Research Methods: Guidance for Post-Graduates* (1996) 169, quoting Michael Patton, *Qualitative Evaluation Methods* (1980) 196.

⁶² The set of questions used in each interview can be found in Appendix A.

suggest why the interview, while an entirely appropriate qualitative method, was not utilised for data collection in the primary study.

2 Focus Groups

As another qualitative method used for the purposes of exploring in depth the individual's meaning-making processes, focus groups primarily establish an informal mechanism of identifying and analysing human perceptions in a shorter period of time.

The informal group discussion atmosphere of the focus group interview structure is intended to encourage subjects to speak freely and completely about behaviours, attitudes, and opinions they possess.⁶³

Originally favoured within marketing research, focus group interviewing has become an attractive method in much empirical work⁶⁴ because it offers the researcher a window into the substantive verbal content of interactions and an opportunity to access the processes of developing and constructing experiences, perspectives and attitudes. In line with the methodological and philosophical assumptions of this thesis which are grounded in the notion that meaning is actively and socially constructed, it is the very interactional nature of focus group dynamics that enables this process of meaning-making to occur. It is the interaction and exchange of 'multiple comments, stories, and descriptions that converge in shared experience during the focus group [which] allow the phenomenon to be confronted, as much as possible on its own terms'.⁶⁵ As a discursive construction, focus group discussions offer an environment of mutually stimulative discussion and in this way, the meaning-making process of law students can be seen as a social construction rather than individually created within a vacuum.⁶⁶ To study the phenomenon of law students and their perceptions of a career in law is in essence to seek access to their stories, descriptions and

⁶³ Berg, above n 15, 111.

⁶⁴ See for example Morley, above n 3; Liebes and Katz, above n 42; Chris Barker, "'Cindy's a Slut': Moral Identities and Moral Responsibility in the 'Soap Talk' of British Asian girls" (1998) 32(1) *Sociology* 65.

⁶⁵ Berg, above n 15, 116.

⁶⁶ Ibid 115. As will be discussed in Chapter 5, Liebes and Katz describe this process as 'mutual aid': Liebes and Katz, above n 42.

experiences and in the pilot study these clearly converged in the focus group experience.

Although participants in a focus group are guided in their discussion by a facilitator or moderator, this technique generates highly dynamic responses within a spontaneous and reactive process. This was particularly expected of volunteer law students who are accustomed to (or at least familiar with) the synergy experienced within the seminars they attend for their law courses. The focus groups involved asking a series of open-ended questions intended to stimulate discussion in much the same way as they would be used to in their law seminars,⁶⁷ and they were conducted for about one hour.

3 The Verdict

Although both methods produced much fruitful data,⁶⁸ it seemed that the focus groups allowed for more stimulated, spontaneous, reactive and open discussion that in itself displayed the ‘meaning-making’ process taking place. As I was approaching this study from epistemological assumptions of the active audience theory and the transformative process of first year law, focus groups were considered more useful than individual interviews because they seemed more effective at stimulating and challenging participants’ thought processes as they drew from and reacted to one another. This meant that I was able to explore with the law students the meanings and understandings they were constructing and transforming about their chosen careers as part of their developing legal identity.

Another reason focus groups were preferred was because the experiences and perceptions of the students are better explored than simply explained or literally described: their perceptions are not static but are instead discursively generated in the moment and as part of an ongoing process. Although interviews do offer the possibilities of obtaining more detailed understanding on an individual level, the

⁶⁷ The questions for the focus groups in this pilot study were substantively the same as those used in the interviews which are reproduced in Appendix A.

⁶⁸ Indeed, as stated earlier, the analysis outlined in chapters 6 and 7 draws from both the pilot Study and Primary Study.

focus groups reflected greater dynamism and provided insights into those shared perceptions that are imbued within the processes and experiences of law school culture. It appeared that the collective brainstorming that was occurring within the groups was able to cast a wider net over the experience of watching legal dramas on television than were the individual interviews. ‘In many ways, it is the very give and take interactions characteristic of focus group interviews that lead to spontaneous responses from session participants.’⁶⁹ The emphasis of focus groups was therefore placed on exploring the students’ experiences and perspectives – that is, not only exploring what they think, but *why* they think what they do.⁷⁰ Such meaning-making processes may not be as easily explored outside the dynamism of focus group discussions, and for this reason the focus group method provides an opportunity to observe and explore the process of opinion formation and identity construction.⁷¹

Furthermore, from a purely pragmatic point of view, it seemed that students preferred to discuss their ideas in focus groups. Because both the interview and focus groups required a one-off voluntary attendance by participants they were given an opportunity to express a preference for either the interview or focus group option. Most students indicated a level of comfort and confidence with the notion of focus group discussions which, as already stated, is not surprising given the nature of participation expected in their normal class discussions.⁷²

B Primary Study

For the reasons stated above, focus groups were chosen as the most appropriate method for exploring the students’ meaning-making processes and identity construction. The primary study therefore employed this method among a larger sample group than the pilot. That is, six focus groups, of a varied number of students, were conducted: one group comprised six participants, another five; two groups each had four participants; and two groups each had only two participants. There were 23

⁶⁹ Berg, above n 15, 115.

⁷⁰ D. L. Morgan, *Focus Groups and Qualitative Research* (1988) 25.

⁷¹ Ibid 28.

⁷² Of course it is possible that students might also have been uncomfortable being interviewed alone by an academic.

participants in total, with seven males and 16 females. Although this may appear to be a small number from a quantitative point of view, it has a strong validity because of the depth and detail gained through a qualitative approach. It is argued that this number⁷³ provides ample data to illustrate the process being researched, and that the shared culture of the law students suggests a reliability that can be tested by other researchers repeating the study.

It was originally hoped that each group would have a full complement of six participants, but the variation in number was unfortunately the result of some recalcitrant volunteers. This was the case despite an over-recruitment policy of 20%. Although this was unanticipated and at first disappointing, it had surprising results: perhaps serendipitously those students in the small groups were very open and willing to engage in lively conversation about their perceptions and understandings. This actually allowed the students to be very reflective which in turn often enabled the discussions to delve deeper into the students' processes of identity and meaning construction. The surprise benefit of such a disappointing turn-out rate was that, on analysis, these smaller groups did not detract from the exploration of law students' identity construction because a mutually stimulative and reactive discussion still did take place.

Having established that focus groups became the method of choice for this research project, Section V now outlines and justifies the logistic elements of the research design, including sampling, setting, risks and consent.

V THE LOGISTICS OF THE PROJECT

Doubtless all logistical questions of methodology are pragmatic – to be determined in relation to available resources and the type of data needed to answer the research questions. The following discussion, unless otherwise stated, outlines procedures and processes that were followed in relation to both the pilot and Primary Studies.

⁷³ Especially when it is remembered that the total number of participants for the research (when including the pilot sample) was 33. Sampling is discussed further below.

A Recruitment

First year law students were recruited for this research project via advertisements displayed on the Faculty of Law noticeboards, and by overhead transparency in all first year courses during the first four weeks of each semester.⁷⁴ The advertisements sought volunteers to take part in the research that was to be conducted in Faculty of Law meeting rooms.⁷⁵ Interested volunteers were directed to meet me in order to be fully informed of the project and were then given the opportunity to accept or reject participation.

B Setting

A common critique of focus groups is that the discussions do not occur in natural settings and thus cannot provide certainty about the accuracy of students' representations of their own experiences and views. Yet this criticism undervalues the group interaction itself. One of the strengths of focus groups is that interactions can reflect the naturally occurring conversations and discussions that law students have with their peers during the course of their studies. Indeed, the groups were not artificially constructed as their empirical existence relied on the sub-culture of first year law students. The use of the university's meeting rooms in the Law Faculty as the setting for the study ensured that access was possible and easy for the target population of first year students to participate. Although it could be argued that the quasi-educational setting (meeting rooms within the faculty) might influence what and how the students would discuss, the main objective for convening them within the 'educational settings which they routinely inhabited'⁷⁶ was to spark the types of lively conversations I constantly observe in my first year classes.⁷⁷ Indeed, students

⁷⁴ The entire first year was comprised of approximately 180 students as a pool of potential volunteers.

⁷⁵ The advertisement is reproduced in Appendix B.

⁷⁶ Morley, above n 3, 14.

⁷⁷ A strength of the setting is the students' familiarity with classrooms, but conversely a weakness is that television is usually watched at home. Yet it is acknowledged that home viewing for some students is often collective anyway. Another limitation of the setting being likened to classroom discussions is the possible tendency to adopt the intellectual approach common to it rather than the more relaxed and less analytical approach of home. But, again to contextualise the research, students exhibit a relaxed enjoyment when discussing their opinions about television because, as distinct from the classroom, they are at liberty to raise and debate at length any issue they are inspired to discuss.

from Wollongong University quickly become accustomed to the particular teaching practices of student-centred learning within the law school, where they increasingly gain confidence to discuss their views with other students. The discussions in the focus groups, although conducted in the less formal meeting rooms, took place in a familiar, if not yet natural, setting. This was evidenced in the way they comfortably articulated their processes of making sense of the law in juxtaposition to what they ‘know’ from popular culture. It was these conversations and debates that I was able to access in the groups and the students did not appear hindered in their desire to be the natural spontaneity of their participation.

C Sample Selection

For reasons of practicality it was decided that the exploratory pilot study should only consist of a couple of interviews and one focus group. This would reduce the time spent in analysing the data, which had to be completed before decisions could be made about the methods used in the primary study. After the focus group method was chosen, the number of groups to be conducted was determined in line with the framework for this research that is based on qualitative notions of exploring aspects of social phenomena. As such, sampling *numbers* were not of primary importance. Along these lines, and in conjunction with the pragmatic consideration that the research team only consisted of myself, it was decided that about six focus groups comprising those who volunteered would provide ample dynamic discussion to analyse and explore their particular constructions of meaning and identity.⁷⁸ Further, it was pragmatic to recognise that as groups were convened during session it would often be difficult to schedule students in a group that was mutually convenient within their busy timetables. On this basis it was realistically anticipated that only approximately 40 students would be likely to volunteer. As mentioned previously, it was intended that each group comprise approximately six students, but instead they often consisted of less than that number, some even of two. Although there is no magic number to be used when conducting focus groups, 4–8 per group is generally

⁷⁸ Morgan argues that factors such as time, cost and the level of research assistance will affect the number of groups that will be run. He indicates that for research of this type, where it is an exploration of perspectives in a semi-structured fashion, four to six groups is probably necessary: Morgan, above n 70, 42.

recommended, depending on practical and substantive considerations.⁷⁹ However, after conducting the pilot study this was not a major concern. As described earlier, the pilot analysis revealed that although groups of 4–6 participants would enable a variety of perspectives to be discussed and transformed without inhibiting more quiet participants, smaller groups of two were still able to produce rich data to explore.

On this basis, despite the expectation of conducting groups of six it was decided that the groups would proceed with however many students arrived at the assigned time. As I found in relation to the pilot study, the smaller number of actual volunteers ‘on the day’ did not have substantial adverse effects on the discussions generated, or on the analysis, and this is primarily because the empirical goals were directed at gaining access to the interaction among law students and the transformation of their understandings of a legal career, rather than simply generating a large volume of ideas. This exploration was still possible regardless of the unanticipated smaller number of participants.

In the same way that sampling numbers was not a primary concern, representativeness too was not given a priority in sample selection. It is important to acknowledge at this point that although there was diversity among the sample (the voluntary nature of the participation meant that groups did contain differences among students which allowed for a certain level of representativeness) participants were selected for the focus groups on the basis of those who volunteered – that is, those who were particularly interested in the subject matter: law on television. It is acknowledged that although it was to be expected that the students who came forward would indeed be representative of those who view legal stories on television, this could not be further interpolated to imply a representativeness of the whole of the law student population. However, this did not pose a problem because in line with the methodological assumptions outlined earlier, the ethnographic spirit of this project was interested in the deep *connections* between student identity construction and television representations, and the *exploration* of meaning in relation to these

⁷⁹ Ibid 43–44.

connections, rather than being able to explain or describe the perceptions of all first year law students.

1 Why Use First Year Students?

As discussed in previous chapters, first year law students enter their studies from a unique position amid the intersection of law, society and fiction. Most have come fresh from high school and are only beginning to be immersed in legal culture. For this reason first year students were selected for this research. As they bring with them to law school an enormous array of understandings and meaning already constructed about law, lawyers and the legal system, first year becomes a most opportune time to discuss their expectations and perceptions and explore aspects of their identity construction. The hypothesis was that in their first year of studying law, students are not only comfortable discussing their responses to law in popular culture but are also keen to do so. With most coming from an increasingly visually literate culture, it was anticipated that these students would be using, among other cultural resources, the stories of popular culture to help them piece together a story for themselves of the kind of lawyers they will become. As the analysis in Part Two will show, student discussions did reveal this deployment of popular stories in their identity construction, thus displaying that first year students provide a rich and valuable source for exploring the construction of meaning about law.

D Outline for Each Group Session

At the beginning of each session, participants were given a full explanation of what was expected during the discussions. They were encouraged to freely participate in an open but mutually respectful manner and were informed that the questions would be directed to the group in general, with opportunities for each to participate as they felt inspired. It was also explained that there were no expected or ‘right’ answers and that the researcher was simply interested in their ideas, attitudes and opinions in relation to the discussion points. In both the pilot and primary studies, all sessions were

recorded on audio-tape – not to capture the truth, but to assist the conversation – that is, in order to hear better what was discussed.⁸⁰

In the pilot study, basic demographic questions were asked of the students at the outset of each session in order to establish broad background information and to gain an accurate sense of who was actually taking part.⁸¹ In order to better facilitate time management in the primary study, a small survey containing the same demographic questions was administered as each participant arrived and settled.⁸² Once the survey was completed, and all issues clarified, discussions were initiated by working through a set of pre-determined questions. Having learned from the pilot study, a set of intentional probes was also planned in order to draw out additional information, or to redirect the discussion when it was seemingly slow to start. Although having a structured set of questions was necessary for consistency among the groups, it was also fundamental to deviate from the schedule as and when the groups were developing dynamically. Often the groups would run with a particular spontaneous discussion almost in isolation from myself as the moderator.⁸³ I was interested in exploring the meaning generated within the group context and so this level of interaction was most desirable – as participants react to each other's responses, meaning and understanding becomes fluid, and the result is the creation of 'group data' which 'reflects the collective notions shared and negotiated by the group'.⁸⁴

As the set questions drew to a close the groups were asked to make any general comments under the banner of the broad topic area: law/lawyers on television. Most groups used this opportunity to revisit particular issues that they had earlier discussed and had continued to reflect on throughout the session. Fortunately, the subject of how they understand their future careers is a hot topic for most first year students and discussion was never dry. As the moderator for these groups, I was continually conscious of ensuring that at all times my contribution was limited to asking the

⁸⁰ Barker and Galasinski, above n 55, 19.

⁸¹ Morgan, above n 70, 63.

⁸² This demographic survey is reproduced in Appendix C.

⁸³ Being the moderator in each of the groups meant that I was able to lend consistency of approach to the discussions.

⁸⁴ Berg, above n 15, 125.

questions and posing issues for discussions, rather than offering substantive comments.

E Informed Participants

To be willing and comfortable to participate in the research, students obviously needed to be fully aware of the methods involved and of any potential risks. This last part of the chapter outlines how students as participants were fully informed of these aspects of the research.

1 Risks

In utilising qualitative methods for this empirical research, it was recognised that there was always a risk that participants may have been vulnerable to social embarrassment in the course of interviews and this was especially possible in focus groups where they were engaged in discussion among their peers. In addition, although I assured participants of confidentiality, the nature of focus groups meant that no absolute guarantee could be given that such harms or burdens would not arise in the event of a participant's breach of confidentiality. Certain measures however, were taken to mitigate these potential harms, including strong encouragement to respect each other's contributions and to maintain integrity through confidentiality (see further below). Participants in this research were entirely voluntary and were thoroughly advised of the nature of the methods to which they were subject.

It is also important to acknowledge that some of the participants were in a dependant relationship with me as I was involved with teaching three classes in the LLB 100 course (during the pilot study in first session) and three classes in LLB 210 (during the primary study in second session), all of which were among the target recruitment population.⁸⁵ My role in the LLB 100 course also extended to some co-ordination responsibilities, including granting extensions for submission of assignments. Throughout the project however, from recruitment to data collection, potential

⁸⁵ The Law and Society (LLB 100) course and the Contract Law (LLB 210) course were both first year compulsory subjects taken in first and second semester respectively.

participants were continually made aware that their participation was voluntary and would not have any bearing on their assessment or enrolment in these courses. This was not only indicated on the initial advertisement, but was explained verbally and included within the consent form. I am confident that on the basis of such frequent declarations students would not have felt compelled to participate, nor feared disadvantage if they refused.

2 Consent

The broad nature of this project was outlined to potential participants in the advertisement and more complete details of the aims of the project and expectations of participants were provided both verbally and via a ‘participant information sheet’⁸⁶ when they came to volunteer or put their names down. At this stage, once the project had been fully explained and they had the opportunity to ask questions to clarify their involvement, consent was acknowledged formally by way of a signed consent form.⁸⁷ This form contained written information about the project and assurances of both confidentiality and disassociation from their law degree studies. Through the act of signing the consent form each participant acknowledged that they had received a full explanation of their involvement with the project.

3 Withdrawal of Consent

Participants were also advised verbally and in writing via the participant information sheet and consent form that they had the freedom to discontinue participation at any time, and there would be no adverse effects on any participant who chose to withdraw this consent. Students who elected to withdraw their consent during the process of an interview in the pilot study were entitled to withdraw data concerning themselves by having the audio tape recording erased and any notes destroyed. Students who were participating in a focus group and who chose to withdraw their consent during the process of the group were also able to have their data withdrawn. Although the data could not have been erased from the group’s audio recording, the transcriber would

⁸⁶ The ‘Participant Information Sheet’ is reproduced in Appendix D.

⁸⁷ The consent forms are reproduced in Appendix E.

have been instructed to omit that participant's contributions from the transcription. As students did not identify themselves on the recording before they speak, the transcriber could only have achieved the omission of a participant through following a voice pattern, which of course would not guarantee a participant the ability to fully withdraw their data. All participants of each focus group were made aware of the difficulties of data withdrawal in the information sheet and consent form. Fortunately, no participant requested to withdraw his or her participation at any time during the course of the project and the need to deal with this issue did not arise.

4 Confidentiality

Individual participants in this research were assured a high degree of confidentiality. Interviews and focus groups were recorded on audio tapes, which were transcribed and then kept securely in a locked cabinet in my supervisor's office. Other than the consent forms (which were kept separately), there was no list of names, and the names of the participants were not kept on or near the tapes. Students were advised and assured that pseudonyms would be used when transcribing and reporting data. Participants were made aware that only myself as the principal researcher and the transcriber would have access to the data collected and that each of us would treat it as confidential. Participants were informed that the data collected from this project would not be used in any other research projects without their permission.

As mentioned earlier, the use of focus groups meant that individual participants must understand the important need to keep the confidence of each other. It was strongly advised and encouraged that members of the group keep the contents of discussion confidential and participants in focus groups were aware of the risks involved before giving consent.

F Basic Demographics of the Participants in this Project

The following demographical data is based on information provided by the students in both the pilot and Primary studies. It covers a total of 33 student participants, 10 males and 23 females.⁸⁸

The average age of the participants was 19 with a total of 25 students having come to university after matriculating from high school. Two students entered law school as undergraduates after taking a short break from study, while six students were graduates and/or considered mature-age students.⁸⁹ Only seven students came from a family background of lawyers, and while 13 students indicated they had some work or personal experience of lawyers, the majority of this experience (8/13) came from one week stints as part of high school work experience programs. All of the students indicated that they watched legal dramas on television at least on a semi-regular basis.

The students were recruited from the University of Wollongong Law Faculty. The university itself has an international standing with an enviable record of achievement in teaching and research.⁹⁰ Twice awarded Australia's University of the Year,⁹¹ it is located just 80km south of Sydney on the southern New South Wales coast. Both students and staff come from diverse backgrounds, many from overseas, but they 'share a culture that respects openness, inclusiveness, collegiality and diversity'.⁹²

⁸⁸ This represents a greater gender imbalance (70% female) than that of the law school itself which has 57% female. Although not dealt with in this thesis, perhaps this indicates a greater willingness of the women to participate; or perhaps it is just that more women law students watch legal dramas.

⁸⁹ Most Australian law students are undergraduates and enrolled in double degrees. For the purposes of this research, I have classified as a mature age student those who were graduate law students, or who had started law after having worked in a previous vocation (as opposed to those who started university straight after completing high school). The percentage of mature age students in this study (18%) roughly correlates with the 15% that contribute to the law school population.

⁹⁰ The University won the inaugural 2006 Commonwealth University of the Year Award for Community Engagement from The Times Higher Education Supplement and the Commonwealth Association of Universities. It has been ranked as one the top 200 universities in the world by The Times Higher Education Supplement – Quacquarelli Symonds World University Rankings 2006/2007.

⁹¹ *Good Universities Guide*: 2001/2002/2003.

⁹² Gerard Sutton, *Welcome from the Vice-Chancellor* (2006) University of Wollongong <www.uow.edu.au/about/welcome.html> at 3 August 2006. Wollongong is the 8th largest city in Australia and is well known for its coal-mining and steel-making. The city, however, is rapidly

The Law Faculty, which was established in 1990, offers both postgraduate and undergraduate courses, in addition to hosting a number of research centres including the Centre for Transnational Crime Prevention and the Legal Intersections Research Centre. The faculty attracts students who have achieved excellent undergraduate or secondary schooling results in their final exams. About 85% of law students are undergraduates.

Each year the law school manages over 450 law students with the first year cohort usually comprised of 180 students. It has a slight gender imbalance with 43% being male, and the percentage of students with lawyers in their families is only 27%. At the end of their studies, a high proportion (75%) enter into legal practice of some kind with 60% remaining in practice three years on from their study. With approximately 130 students graduating each year, about 85 of these move into the university's Practical Legal Training course that prepares them for legal practice. The majority of Wollongong University law students come from the geographical area of the Illawarra and Southern Sydney.

VI CONCLUSION

In this chapter I have endeavoured to provide explanations for the methods used for the data collection of this research project. Operating from the perspective of a qualitative methodology and on the assumptions of the active audience paradigm, the primary utilisation of focus groups ensured the generation of a rich and deep resource for analysis: student discussions. The focus of this chapter has been on a justification of the research design in terms of the data collection methods. The following chapter, which serves as the preface to the analysis in Part Two, takes this justification and explanation further by outlining the methods used to analyse the data itself. As mentioned in Section II above, the data was analysed using two aspects of an ethnographic approach: broad interpretive analysis using coding strategies and critical discourse analysis. The discussion in Chapter 5 therefore seeks to provide

growing and changing with education, information technology and tourism emerging as major industries.

explanations of how these interpretive strategies were employed in order to arrive at the analysis presented in Chapters 6 and 7.

PART II

ANALYSIS

Part I argued that students are in a wonderful stage of transformation as they participate in first year law. This process of change enables them to experience, challenge and construct meanings about law, and has the potential to help them become aware of their ongoing identity construction. In using television stories about the law and lawyers to stimulate student discussion, the focus groups produced a rich and fertile source of data from which to explore the meaning-making processes of an active law student audience. This part of the thesis draws on and interprets this data to make some observations about the ways in which first year law students are experiencing their transformation. To this end, Chapter 5 prefaces the analysis with an explanation of the particular strategies employed to analyse and interpret the data and Chapters 6 and 7 explore and discuss the students' interpretation and construction of meaning about lawyering.

The analysis in Chapter 6 particularly concentrates on the students' referential use of television stories to not only create expectations and aspirations for themselves, but also to contribute to identity construction and ethical development. In Chapter 7, the students' development of critical abilities is the focus, and it is shown that their interpretations of and responses to legal stories on television are reflective of their burgeoning abilities of critique and reflection. In combination, these chapters argue that the students utilise popular stories in their educational and personal development.

CHAPTER 5

EXPLANATION OF STRATEGIES FOR DATA ANALYSIS

I INTRODUCTION

As a way of gaining insight into the transformed and shared meanings of first year law students, focus group discussions of television lawyers produced a wealth of data to explore. Having outlined in the previous chapter the methods for collecting this data, this chapter seeks to outline the strategies adopted in analysing and interpreting it.

Based in qualitative methodology the focus group¹ data was analysed using two main approaches: the interpretive application of coding strategies and a more focussed critical discourse analysis. Referred to briefly in the previous chapter, these two methods were primarily concerned with exploring the ‘talk’ of the students as a discursive construction in order to identify socially shared understandings, and their deployment in this research is individually detailed below. The key to both these methods however, is in seeking to go beyond the explicit reporting of opinions and views and delving into the processes of meaning-making that construct these articulations. The purpose of this chapter is therefore to show how the deployment of the chosen analytic methods would achieve this purpose and underpin the analysis discussed in Chapters 6 and 7.

Perhaps quite obviously the step prior to the analysis was to have the audio version of the discussions transcribed into written form. Once this was completed, the transcript was checked and cleaned by way of editing the manuscript for any typographical

¹ This term is used here to collectively refer to the interviews and focus groups from the pilot in conjunction with the focus groups of the primary study.

errors and inconsistency. In recognition that intonation and emphasis are often lost in the process of transcription, I undertook to listen to each tape and edit any inconsistencies in the punctuation and grammar of the written text.² Although it is impossible to fully avoid the loss of some meaning in the process of transcription, every effort was made to keep this to a minimum. Unless otherwise specified, the analytic methods discussed below were first applied to the pilot study discussions and then deployed in the same manner for the primary study.

II INTERPRETIVE CODING

The analysis of the discussions was philosophically based in a hermeneutic approach that concentrates on the interactive relationship between text and audience, and recognises the individual transformative process. In challenging the idea that there is only one textual meaning aligned with authorial intent, this method utilises an interpretive literary analysis where the students' discussion or 'talk' becomes the text from which to explore the meaning constructed by first year law students. In order to achieve this, two primary steps were taken to interpret the students' talk as text. The first was to read the transcripts as a narrative paying particular attention to certain aspects of the discussion, such as those matters that were interesting, important or contentious to the students, or even those ways in which consensus on issues evolved during the course of the discussion.³ The second step was to code the transcripts using particular coding categories that were generated through a prolonged engagement with the data. In particular, some of this coding schema was inspired by the work of Liebes and Katz.⁴ These steps of the interpretive analysis are each explained in the following discussion.

² The fact that I was able to pick up on the use of legal terms or fictional characters' names that were unknown to the transcriber merely enhanced the reliability of the written text.

³ This was the approach advocated by Morgan in his focus group discussions on heart attack risk factors: D. L. Morgan, *Focus Groups and Qualitative Research* (1988) 28–9.

⁴ Tamar Liebes and Elihu Katz, *The Export of Meaning: Cross-Cultural Readings of Dallas* (1993).

A Step 1: Transcripts as Narrative

The first analytic step was to repeatedly read through the transcripts as though they were a sustained narrative and to highlight general themes or interesting points that corresponded with the initial research questions, both general and specific.⁵ In this context a ‘theme’ was seen as being constituted by repetition of key elements. For example, it was initially important to look for the ways that different students touched on the same ideas or issues, such as expectations of a career in law, aspirations for the future, and the characteristics of lawyers they saw being presented on television. General summaries were created during this process that addressed several elements of the research questions and this aided the process of creating categories for the second step of coding the data.

A crucial part of identifying these general themes was allowing the transcripts to tell the students’ interwoven stories. In reading through them several times over, it was important to attend to the issues that dominated the students’ thinking – that is, to pay attention to the issues that were repeated over and over again, clearly indicating that students viewed them as important. One such issue was the notion that the practice of lawyering must involve some sort of altruism or selflessness. Quite often, regardless of the topic at hand, the students would return to the idea that lawyers must be ‘good’ or be interested in ‘helping people’. Another example was the way in which students often expressed their feelings of inadequacy in comparison with the skills and abilities of television lawyers. The importance to the students of these issues was present in every group and therefore could not be overlooked in the analysis. Contentious issues such as how television lawyers do or should face ethical dilemmas also required particular attention in the interpretive analysis. Not only did this issue reflect the interaction of differing student perspectives, which was one of the benefits of focus groups, but it also enabled students to become conscious of their own stance

⁵ As outlined in Chapter 2.

as they articulated their arguments, and to contribute to their evolving construction of meaning about various ethical dilemmas.⁶

After subsequent readings of the transcripts that noted themes along the lines of topics mentioned above, it also became important to look for themes that reflected identity construction and interpretation of ethical dilemmas. As the research evolved, it further seemed that emerging from the data was a trend among the students to utilise the television stories to develop skills in critical evaluation and a development of awareness and self-reflection. It was as a result of this close reading of the transcripts that coding categories were conceived in order to more naturally categorise the types of responses and perspectives students were constructing in relation to a career in law.

B Step 2: Coding Strategies

As an integral part of the choice to run a pilot study, these transcripts were initially read using the interpretive schema described above in order to identify particular coding categories through which it might be useful to discuss the students' meaning-making processes. At this stage several broad categories were inductively identified as keywords to look for in the discussions.⁷ The following table (Figure 5.1) describes the codes that were attached to these particular issues:

⁶ Morgan, above n 3, 29. The ethical development of law students will be discussed in both Chapters 7 and 8.

⁷ Inductive categories are a result of the researcher immersing themselves in the data in order to identify themes that are meaningful within the group. 'The development of inductive categories allows researchers to link or *ground* these categories to the data from which they derive': Bruce L Berg, *Qualitative Research Methods for the Social Sciences* (2001) 246 (emphasis in original).

Figure 5.1

Categories/Issues	1st level Coding (descriptive)	2nd level coding (interpretive)
What types of lawyers do they see presented on TV?	Types	Evaluation
What skills/abilities do TV Lawyers possess?	Skills	Admiration
What distinguishes a good/bad lawyer?	Good/Bad	Evaluation Judgment
General characteristics of TV lawyers?	Char	Aspiration Comparison
What are the ethical dilemmas that lawyers face?	Ethics	Evaluation Judgment
What is the public perception of lawyers?	Perception	
What are their expectations of becoming a lawyer?	Exp	Aspiration Identity
What status of lawyers do the students recognise?	Status	Motivation
How 'real' are the representations to the students?	Realism	

In line with the research questions, the broad categories as outlined in the table above were at first instance applied to the pilot study transcripts. When the students discussed a particular issue, the corresponding first level code was noted in the margin. I have termed these codes as descriptive because they were purely used as keywords to indicate the issue being talked about. The second level codes were applied on subsequent readings that attempted to zero in on the first level issues. The more interpretive coding of this second level sought to identify emergent responses that were underlying the students' discussions. For example, it was important to explore the nature of evaluative judgment that was taking place as the students talked about the ethical dilemmas facing television lawyers; or, further, to explore the ways in which students aspire to certain characteristics or skills of lawyers as part of their interpretation of what television lawyers do.

These categories proved to be very useful in classifying various elements of the students' discussions and in allowing for the deeper exploration of their interpretations that in turn gives insight into their processes of identity construction.

For this reason, it was decided to retain these categories and codes for the primary study analysis. Upon reflection as the analysis progressed it was recognised however that, although fruitful, these preliminary categories required supplementation in order to provide the rich, contextual analysis that the research questions demanded.

1 Patterns of Involvement

Upon this basis, the data was further coded and analysed in line with an understanding that viewers have distinct patterns of involvement⁸ with the programs – primarily in what is termed the critical and referential realms. In the context of comparing cross-cultural readings of *Dallas*, Liebes and Katz have argued that viewers may use a television program referentially – as a connection to real life (including their own), utilising it to form expectations and ideas about certain aspects of their lives (as if the characters were real).⁹ Or, alternatively, viewers may use it more critically by showing awareness of the program as a production.¹⁰ Of course, this is not to argue that one pattern of involvement with the television text is exercised to the exclusion of the other: ‘a sophisticated viewer should be seen as a commuter between the referential and the critical’.¹¹ Although Liebes and Katz found that their participants used the programs more referentially than critically,¹² it would seem that law students exhibited a certain level of comfort in critiquing the construction of legal dramas. It should not occasion surprise that these students did not seem to express more referential statements than those of a critical nature because law students profess to be well acquainted with the ‘real’ law, and therefore easily able to differentiate between the two.¹³ Further, as Liebes and Katz have noted, an involvement within the realms of higher education (with its emphasis on critical reflection and analysis) increases a viewer’s potential for critical readings of the

⁸ Liebes and Katz, above n 4, 100.

⁹ Tamar Liebes and Elihu Katz, ‘On the Critical Abilities of Television Viewers’ in Ellen Seiter et al (ed), *Remote Control: Television Audiences and Cultural Power* (1989) 209.

¹⁰ Ibid.

¹¹ Ibid.

¹² In their study, the ratio of the two patterns of involvement was better than three to one in favour of the referential: Liebes and Katz, above n 4, 101.

¹³ It was not surprising to Liebes and Katz that the American group made far more critical statements than other groups (eg Moroccan Jews and Arabs) because the ‘Americans do not take the program as real or serious, because they are obviously well acquainted both with the real *Dallas* and with real Hollywood’: *ibid.*

programs.¹⁴ Indeed, it is argued that these law students are highly educated members of a media-saturated culture in which they have learned to be critical (at least to have an awareness of the constructed nature of television drama). Within this context one might even be surprised not by the critical nature of student readings but rather by the degree to which these students continue to operate referentially. As the analysis will show, law students constantly commute between both realms. For example, they will make ‘critical’ statements about the stereotyping of say, Bobby Donnell on *The Practice* as an assertive male lawyer and yet in the next breath speak ‘referentially’ about him – that is, personally reacting to his behaviour as if his character was real. On this basis, the analysis in Chapters 6 and 7 is primarily devoted to a discussion of the referential and critical realms respectively.

2 Coding the Referential

Drawing on Jakobson, Liebes and Katz argue that a referential use of stories connects programs with real life.¹⁵ That is, viewers relate to the characters as if they are real people and in turn respond emotionally to them, speaking as if the show was some sort of documentary.¹⁶ In a referential reading, the viewer suspends disbelief in order to redirect attention to the viewers’ lives or to the lives of other real people, whether personal acquaintances or of a certain social category such as women, judges, criminals and so forth.¹⁷ It is in making referential statements that the students are able to participate in a ‘trying on of characters ... imagining how wonderful or awful it would be to be like them’.¹⁸

The transcripts were thus coded for all those statements that were referential. This meant isolating those statements that connected ‘an observation about the program with an observation about real life’,¹⁹ or where it was evident they were spontaneously using the text as a springboard for relating to personal, interpersonal or

¹⁴ Ibid 101.

¹⁵ Ibid 100 citing Roman Jakobson, 'Linguistics and Poetics' in Richard T De George and Fernande M De George (eds), *The Structuralists: From Marx to Levi-Strauss* (1972) .

¹⁶ Liebes and Katz, above n 4, 100.

¹⁷ Ibid 32.

¹⁸ Ibid 103.

¹⁹ Ibid 101.

communal problems. Once these were located, they were subsequently divided into four main areas: (i) aspirations and expectations for a legal career; (ii) identification with the characters; (iii) expression of altruism; and (iv) construction of ethical stance. From the isolation of these four areas, the analysis presented in Chapter 6 was formulated.

3 Coding the Critical

Liebes and Katz argue that a critical reading involves an ability to discuss programs as ‘art’ or as aesthetic constructions.²⁰ Importantly, critical viewers exhibit a manifest awareness of the ‘constructedness of the program and the audience experience of it’.²¹ Viewers are thus credited as critical if they are able to recognise or define genres and formulaic conventions,²² or to perceive a ‘theme’ or ‘message’ in the fictional narrative.²³ Further, ‘critical’ viewing also encompasses the viewer’s ‘pragmatic awareness’ of the program by their cognitive, affective and social self.²⁴

Following this lead, I have utilised the same understanding of critical reading to code the transcripts in terms of the ways in which students critically use legal programs. That is, to explore those *critical* articulations which belied the subtle ways in which students use television narratives to individually approach and understand lawyering practices. Practically, this meant isolating those statements that referred to the program as a text or construction, or which revealed an ‘understanding of the genre or of the dramatic requirements of television fiction’.²⁵ Every such statement was coded as critical, and was then further categorised using the codes in the table below (Figure 5.2).

²⁰ Ibid 32.

²¹ Ibid 32.

²² Liebes and Katz, above n 9, 208.

²³ Ibid 205.

²⁴ Liebes and Katz, above n 4, 115.

²⁵ Ibid 35.

Figure 5.2

Code	Categories addressed
Theme	What theme does the program represent? What do the students believe it demonstrates about the legal world?
Message	Do the students ascribe a message to the producer? What do the students think the producers are intentionally trying to say about law or lawyering?
Mimetic	Students' reflection on the level of reality depicted in the program, and by implication the constructed character of the TV program.
Genre	What aspects of the story do the students recognise as formulaic?
Dramatic Function/ Construction	How do students comment on the balance between characters needed to propel the story or keep it interesting? That is, do they recognise narrative strategy?
Pragmatic	Students' awareness of how the program occupies their imagination and transform their understanding.

The analysis as developed through the application of these codes is particularly addressed in Chapter 7.

4 Coding the Interactions

In attempting to explore the identity being constructed among law students through the (re)telling of legal stories, it was important to identify those aspects of the discussions that benefited from communal reflection:

[i]n these processes, one can observe the ways in which consensus about the program arises from the interaction with community norms and how the program enters the culture via agenda setting, identification, para-social interaction, and the like ...²⁶

By thus capitalising on the benefits of qualitative discussions as generated by focus groups, a final step was taken in the coding of the transcripts that emphasised the interactions of the members of the group. The following table (Figure 5.3) lists further coding categories that were applied to the transcripts in order to address the dynamic and communal nature of the group interaction.²⁷

²⁶ Ibid 33.

²⁷ These codes were also taken from Liebes and Katz's illustration of their methodology through the Moroccan group: see specifically Chapter 4 in Liebes and Katz, above n 4, 35.

Figure 5.3

Interpretation	Actively making sense of the story or representations, eg: by confirming elements of the storyline with each other.
Attribution	Actively making sense of the motives of characters, eg: debating and challenging each other's understanding of character motives.
Interaction	Noting the social dynamics of the group, eg: finishing each other's sentences or interrupting.
Acculturation	Bringing communal or cultural sources to bear on the interpretation, eg: using a cultural way of describing lawyers.
Mutual Aid	Noting group interaction that is aimed at better understanding, interpretation or evaluation, eg: when students ask each other questions to further clarify or elucidate an issue.
Referential Forum	Spontaneous use of the text for relating to personal or communal understandings that forms the basis of group discussions.

The analytic strategies described above reflect the interpretive nature of this first approach to the data. Placing an importance on the law student as an active viewer, the transcripts were first seen as a sustained narrative that was capable of telling interwoven student stories. The coding strategies illustrated above combine to form a complex matrix of interpretive exploration. While it is true to say that each coding approach builds on and supports the others, they were developed to have a cumulative effect. That is, after applying broad categories as described in Figure 5.1 the use of classification (critical and referential) enabled a more contextual analysis to be developed. In turn, coding the interactions as described in Figure 5.3 enhanced this analysis. In summary, the approaches outlined in this section were designed to progressively build a picture of the various meanings students have constructed together.

III CRITICAL DISCOURSE ANALYSIS

Augmenting the interpretive coding explained above is a second method of data interpretation based on critical discourse analysis. As I have argued in this thesis that the 'talk' of the groups is regulated by discourse, this technique was employed to

isolate aspects of language (for example rhetorical devices and linguistic elements) that would point more specifically to socially shared meanings and enrich understandings of how first year law students construct the identity that is constitutive of their talk. Critical discourse analysis is used here to demonstrate the interactive production of meanings that are woven into students' identity projects through the use of language as regulated by discourse.²⁸ It is important to note however, that discourse analysis is used in this research only up to a point. That is, it is not used to reach the same depth and detail that a purely linguistics project might require. Rather, critical discourse analysis is used here as a tool to serve and supplement the thematic analysis already undertaken.

A critical discourse analysis of the students' talk as *text* reminds us not to take their statements purely at face value but rather to approach them as constructions of language that illustrate the generation of meaning within legal discourse.²⁹ Although it can be argued that texts are polysemic and thus proliferate endless meanings,³⁰ in social practice those meanings are regulated and stabilised by discourse. As discussed in Chapter 3, Foucault argues that 'discourse constructs, defines and produces objects of knowledge in an intelligible way while at the same time excluding other ways of reasoning as unintelligible'.³¹ As such, the speaking subject is dependent on the prior existence of subject positions that they must adopt to make sense of their discursive world and appear coherent in it.³² Naturally occurring discourse, such as that of first year law students discussing popular culture, can thus be seen as a form of social practice within a socio-cultural context.³³ Law students as language users are not

²⁸ Chris Barker and Dariusz Galasinski, *Cultural Studies and Discourse Analysis: a dialogue on language and identity* (2001) 8, 27.

²⁹ Barker and Galasinski, above n 28.

³⁰ 'Texts are said to be polysemic, that is, they embody the potential for a number of different readings to be constructed from them. Cultural understanding of texts cannot remain with the text but must concern itself with the processes involved in the realisation of meaning by readers': *ibid* 7, referring to H Gadamer, *Philosophical Hermeneutics* (1977); S Hall, 'Encoding/Decoding' in S Hall et al (eds), *Culture, Media, Language* (1981); W Iser, *The Act of Reading: A Theory of Aesthetic Response* (1980).

³¹ Barker and Galasinski, above n 28, 12. See Michel Foucault, *The Archaeology of Knowledge* (1972).

³² 'A subject position is that perspective or set of regulated discursive meanings from which discourse makes sense. To speak is to take up a subject position and to be subjected to the regulatory power of that discourse': Barker and Galasinski, above n 28, 13.

³³ *Ibid* 63.

isolated individuals but are engaged in communicative activities as members of legal culture via their position within law school.

By delving into the language used within the discursive construction of law student talk it is therefore possible to understand and translate the shared meanings that are generated within that discourse. Aspects of the methods and tools of text analysis are thus brought to bear on first year law students' talk in order to help enrich the study of how students transform meaning about their future careers and understand the way in which they construct themselves in relation to that meaning. A detailed exploration of language-in-use is used to analyse how consciousness is constituted through language and how law students make emotional and identity-related claims about themselves.³⁴ In a practical sense this was achieved by systematically investigating the lexical and syntactic aspects of language in the data.³⁵ Of particular interest were the lexico-grammatical structure and the specific use of vocabulary.

A The Lexico-grammatical Structure

This analytical category is interested in how 'grammatical structures render reality intelligible to us'.³⁶ That is, the structure of action and agency in the text can be explored by evaluating the syntactic constructions of statements. Thus it is possible to make comparisons between the students' statements that are declarative, in the present tense and pronounced in an active voice, and those that are more passive and distanced from the source of action. For example, it was common for students to articulate strong desires towards altruism in the active voice in contrast with their passive descriptions of lawyers' everyday practices. As discussed in Chapter 6, the use of such grammatical structures gives an insight into the way students align themselves with particular aspects of legal practice.

³⁴ Ibid 21–22.

³⁵ By employing critical discourse analysis the research is provided 'with sets of linguistic procedures validated by agreement regarding the rules of language ... [which enables it] to make claims to repeatability and verifiability': ibid 27.

³⁶ Ibid 73.

B *Vocabulary Alone*

An alignment with the more positive aspects of lawyering was also apparent when the lexical components of statements are considered. That is, by placing a focus on the vocabulary alone certain aspects of student identity construction can be noted, including the generation of meaning about what it means to be a ‘good’ lawyer. For example, in analysing the talk it was important to look for the use of recurring words, equivocal words, ideologically contested words, or specifically connotative words that might betray bias or reveal a lack of self-confidence. An example of particular concern for the students was the need to articulate their disassociation from any and all aspects of ‘bad’ lawyering. The polarity exhibited in students’ discussion of what is good or bad legal behaviour was exemplified in their deployment of personal pronouns. As detailed in Chapter 6, the use of ‘I’ or ‘we’ instead of ‘they’ or ‘them’ was quite significant in terms of the process of becoming for student identity construction.

By employing a textually-oriented discourse analysis to the students’ talk an additional focus was placed upon the social meanings of specific linguistic structures accomplished by law students.³⁷ As language users communicating within the social and cultural context of law school, law students exchange, transform and construct meaning about legal practice and it is through critical discourse analysis of their talk that this meaning can be further explored.

IV CONCLUSION

An interpretive approach to qualitative data analysis has enabled the social action of students discussing popular legal culture to be explored as text.³⁸ This means appreciating the various layers of meaning constituted in their talk, and in this research the exploration of such meaning has been achieved through the application of a series of analytic steps. Beginning with interpretive coding that treated the transcripts as narrative and enabled the development of broad categories, the analysis

³⁷ Ibid 63.

³⁸ Berg, above n 7, 239.

moved into more specific coding among the critical and referential realms of viewer responses. Highlighting the themes and meanings constructed by law students, the first interpretive approach was then complemented by a critical discourse analysis. This second linguistic approach helped to show how the construction of meaning is achieved through the building blocks of language. At the completion of these analytic steps, the transcripts were read through a final time in order to check the validity of interpretation and to verify or modify previous arguments.³⁹ The following chapters in this part detail the results of this analytic process.

³⁹ This is the last step Berg recommends for qualitative researchers involved in interview or group analysis: *ibid* 321.

CHAPTER 6

REFERENTIAL USAGE – CONSTRUCTION OF LEGAL IDENTITY

I INTRODUCTION

In Chapter 3 the notion of identity as a culturally specific production was discussed. It was argued that first year law students draw on the discursive resources from their various cultural positions to contribute to their identity construction. Drawing from the methods discussed in Chapters 4 and 5 this chapter describes and highlights how students use legal popular culture¹ as a referent to future desires and construction of identity. In particular, this chapter presents analysis that describes the students' referential use of television. That is, as described in Chapter 5, law students are active viewers showing distinct patterns of involvement with television programs primarily within the referential and critical realms.² While the critical aspect will be addressed in the next chapter, the referential use of television narratives is illustrated in the analysis below.

To that end, the chapter first describes the ways in which students articulate their aspirations and expectations through discussions of the skills, characteristics, status and lifestyle of television lawyers. The analysis then moves to an illustration of the students' articulated altruism. In this section it is argued that idealistic altruism constitutes a large part of the identity law students are constructing. To complement this description of altruistic desires, the last section of the chapter is devoted to illuminating aspects of the students' ethical development. In analysing their discussions of television lawyers' behaviours, it is argued that students polarise the way they see ethical actions in order to identify with the type of lawyer they want to be. As part of this ethical judgment students also exhibit an awareness of what Simon

¹ See Chapter 3 Section IIIB for a definition of this term.

² See Chapter 5 for an explanation of this analytic classification, and also Tamar Liebes and Elihu Katz, *The Export of Meaning: Cross-Cultural Readings of Dallas* (1993).

has termed 'transgressive' lawyering,³ and this section illustrates the students' debates over when ethically questionable activities might be acceptable. In combination, these sections use student discussions to show how students use referential identification with television lawyers to contribute to their identity development.

II ASPIRATIONS AND EXPECTATIONS – ELEMENTS OF DESIRE

From the earliest moments in the analytic process, it was clear that students used television narratives to help picture their future careers, and the analysis revealed a great deal about their aspirations and expectations. In general, the analysis showed that, despite a cynical recognition that television narratives have a disparate connection with reality,⁴ these first year law students want to be like television lawyers in many respects. Specifically it is argued that they convert their understandings of television lawyers into storied projections about the legal identity that they are looking to assume. To view identity as a process of 'becoming'⁵ is to recognise that identity connects us with the society in which we live.⁶ Law students are taking up positions of legal identity by relating fictional characteristics to their imagined future position in the world. Even though they will declaratively argue that television lawyer stories are not real, students nevertheless consistently recount a desire to emulate the lifestyles or attributes of the fictional characters.

As students observe lawyers on television they identify with them through a perception that they are currently being moulded into one, and they begin to transform television lawyers' behaviours and characteristics into future desires. As they interpret or make sense of what they see television lawyers do, and as they observe how they behave, students use the televisual text as a springboard to altering their personal aspirations or expectations. The following extract serves to illuminate

³ William H Simon, 'Moral Pluck: Legal Ethics in Popular Culture' (2001) 101 *Columbia Law Review* 421.

⁴ The students' critique of mimesis will be discussed at length in Chapter 7.

⁵ This is the position argued in Chapter 3. See further Chris Barker, "'Cindy's a Slut': Moral Identities and Moral Responsibility in the 'Soap Talk' of British Asian girls" (1998) 32(1) *Sociology* 65, 66.

⁶ Kathryn Woodward (ed), *Identity and Difference* (1997) 1.

the students' referential use of television in this way. An earlier comment had been made that as law students they perceived the representations on television to be positive and, when asked to explain why, this is the discussion that occurred:

Beth: [TV programs] show the side to law that you, you kind of know doesn't exist but gives you a little bit more of an edge, it's like being offered something like an incentive.

Jess: Yeah.

...

Craig: Something to hope for, like every one of us would...admit that we want to be there someday.

...

Tara: Yeah it is sort of like a hope thing.

Rob: Almost like a role model as well, it's like that, you know even though people realise that people like Ally McBeal doesn't exist...people would say yeah I'd want to be like Bobby Donnell or like Lindsay Dole.

Tara: Yeah, aspire to that type of person.⁷

Evident in this extract is an overwhelmingly common student acknowledgement that the representations of lawyers were not realistic,⁸ yet students equally described strong aspirations to be like them. Their discussion centred on the idea that television lawyers provide for law students something to 'hope' for and 'role models' to aspire to. Another student articulates it in this way: '... they've got a lot of confidence in what they're saying ... they're dramatic ... and I sort of think gosh, I hope I can be like that when I'm doing it'.⁹ Without any practical alternative, first year law students articulate that they aspire to have the characteristics of television lawyers. So what is it that makes law students want to be like the lawyers on television? What specifically are the attributes of a television lawyer's life that they want to emulate? Whether they win or lose, lawyers of the small screen are generally very good at what they do, and so the quality of their skills and the intensity of their characteristics provide much

⁷ FG 7, 12. In this and all subsequent footnotes, the data is reported by focus group number (with the abbreviation 'FG' standing for Focus Group), student pseudonym if needed, and pinpoint page reference from the original transcript. Additionally, within transcript quotes and extracts the use of italics are added to emphasise material I view as important; and '...' indicates that material has been left out to aid readability.

⁸ As will be explored in the next chapter, many student comments were often prefaced by such a statement as: 'even though I know it's not real...' or 'it's not realistic but...'.

⁹ FG 5, Kylie, 6.

stimulus for aspirations among the students. Moreover, the status accorded to lawyers on television, in addition to the lifestyle accompanying it, is seen by students as a very attractive by-product of the work they do. This section of the chapter will therefore explore the students' articulation of desires for, first, the television lawyers' skills and characteristics and, second, the status and lifestyle of television legal practice.

A Skills and Characteristics

Of all the skills a lawyer can possibly possess or exhibit within the practice of their daily work, it was the legal acumen through oration that appealed to student desires. The discussions in the focus groups often identified the lawyers' oratorical skills as being a desirable and sought-after quality:

... I admire like the competence and the wit of the lawyers in the courtroom as they're talking, I know it's not real but it's something, not to strive towards but ... something that's there that you ... would like to have ... like if you're *just* going to be a lawyer who's mainly researching and interviewing clients sort of thing, then maybe not, but it's definitely something to go for I think.¹⁰

This student is looking forward to developing the intelligence and ability that is required to articulate herself successfully. It is interesting to explore the way she has interpreted the ideal television lawyers' characteristics – only lawyers in the courtroom need to be possessed of such oratorical competence. Note also her use of the word 'just' to pejoratively indicate different levels of being a lawyer – it is only litigation (which doesn't involve research) that requires competent communication skills.¹¹

Another student argues that such communicative ability would serve an additional purpose by raising lawyers in the esteem of others: 'To have the intelligence and just the ability to get the law and interpret and articulate it in such a way as to just blow

¹⁰ FG 4, Helen, 18.

¹¹ The student perpetuation of class distinctions will be discussed further below.

everyone away yeah, I'd like to have that now ...'.¹² To make such an impression through verbal acuity is also desired by another student who claims that in *Law and Order* the orations in the closing arguments are so 'well delivered' that it makes her think 'I'd like to be able to speak like that to a jury and to have that much impact'.¹³ The same student also described Eugene from *The Practice* as presenting closing summations that are 'just so perfectly worded you think if they can do it, why can't I'.¹⁴ This is an example of how the students use the television text to define their capabilities, or more precisely their desired future abilities. In this sense they see themselves as future lawyers and their identification with their counterparts on television enables them to measure their current legal and communication skills against them. Such a referential use of television however can mean that the students allow the representations to play on their self-confidence to match the hyper-perfect abilities and skills of television lawyers:

Megan: They're all too good. [*Laughter.*] And you think I'd never be able to do that.¹⁵

Kylie: ... and when they do their closing arguments and that sort of thing I think gosh how do they remember all that?¹⁶

Based on an assumption that real lawyers could not attain to the same level as television lawyers the students' comments tell stories about their lack of self-confidence. One student compared her present capabilities in terms of oratory skills and knowledge with those on television and found a deficiency: '[t]here are a lot of things that makes me think oh no I can't do that'.¹⁷ And another student articulates the futility of desiring the brilliant personal and professional traits of television lawyers:

¹² FG 1, Alex, 32.

¹³ FG 7, Beth, 12.

¹⁴ FG 7, Beth, 12–13.

¹⁵ FG 1, 24.

¹⁶ FG 5, 6.

¹⁷ FG 8, Maddie, 6.

I think it can be a bit disconcerting because ... you sort of think wow ... these lawyers are ... people with these absolutely brilliantly razor edge minds and you sort of think boy you know, could I possibly measure up to that, and *of course* you know that you couldn't.¹⁸

Although this comment is evidence of a critical recognition that television is just a production,¹⁹ students are showing that they are nevertheless desirous of noteworthy skills and characteristics exhibited by television lawyers. Their position as first year law students and their interpretation of television lawyering, therefore can lead to a disconcerting self-doubt. With the use of the term 'of course' Dan reveals that it is virtually unthinkable that any of them would be able to compare to the brilliance of television lawyers.

In terms of other specific characteristics that stimulate aspirations among law students, one student stated that television lawyers '... portray admirable qualities – you know, qualities that you would like to see in yourself'²⁰ and when pressed for specific examples the group together indicated that personal presentation, convincing oratory skills, assurance, ego, strength and confidence were among the important attributes.²¹ In other groups students also referred to professionalism and a creative spontaneity in the courtroom as attractive qualities: 'I [like] their ability in court to just think on their feet spontaneously'²² and 'the way they can always pluck one thing out of the air at the very last minute, take it to court and get the case dismissed ... that's amazing'.²³ In another group, the students identified the television lawyers' tenacious dedication and general intelligence as aspects that kindle admiration:

What characteristics do you admire in these lawyers?

Joanne: Their tenacity.

Ava: I think that they're always really dedicated to whatever they're doing they're fighting for it really hard and they're always trying to, they're never sort of doing anything half assed most of the time they're always really going for it.

¹⁸ FG 4, Dan, 12.

¹⁹ See Chapter 7 Section II.

²⁰ FG 7, Tara, 13.

²¹ FG 7, 13.

²² FG 3, Margaret, 8–9.

²³ FG 3, Scott, 8.

Megan: They're always so intelligent always just being able to stand up and just speak and say everything so fluently and nicely.

Ava: And even when there's all these other dramas going around and all these conflicts in their life and everything they'll still get into court and you know put on brilliant performances. They usually win.²⁴

In this discussion, the students find admirable and appealing the articulation, confidence, dedication and success of the lawyers on television. But it would appear that it is not only the presence of these characteristics that the students find attractive. Note the repetitive use of the word 'always' by both Ava and Megan. By using this adverb students give the impression that they admire the way television lawyers exhibit these characteristics at all times. It is an absolute reference used to idealise the work and success of television lawyers and to paint a dreamlike picture of the way they might view themselves as future lawyers. In this way, the students seem to reveal an attitude that their picture of perfection is almost unattainable. Yet it is this dreamlike picture towards which they nevertheless seem to strive. Take this next statement for example, where one student is talking about the portrayal of 'good' lawyers in contradistinction to 'bad' lawyers: '[they are] *always* the brilliant ones who articulate themselves so well and have such an in-depth knowledge of the law and ... they're just *absolute geniuses* when it comes to the law'.²⁵ Again this use of language belies an expectation that such skills would appear to be just out of their reach. 'Always brilliant' and 'absolute genius' are terms that students would not use to describe themselves. Although they indicate an underlying cynicism about how television representations correlate with reality and this will be discussed in the next chapter, it is evident that students use such a critique as one method through which to construct a picture of legal identity. The following extract serves to illustrate this.

Megan: ... sometimes they'll show a scene where a person has to come up with something very quickly and they just know the law off the top of their heads you know.

Ava: [They say:] 'Oh yes I remember this case in such a state – this happened I think on the 3rd of May ... three years ago'.

Tom: Like we will in three years time. [*Laughter.*]²⁶

²⁴ FG 1, 14.

²⁵ FG 1, Alex, 20.

²⁶ FG 1, 13.

It is significant to note here that students are constantly commuting between the two patterns of involvement. The ability both to be critical of texts as constructions and yet also to simultaneously treat them as if they are real can be seen as a double movement that seems to mark much of what the students say. In the interaction above the students are reflecting on the seemingly uncanny ability of television lawyers to recall the law with perfect ease and accuracy. Of course, this is completely in line with the perfect lawyer picture that they are constructing, yet it is the comment from Tom that is most instructive. With sarcasm this student questions whether perfect memory is a skill that he will have acquired after he has completed his studies, and the laughter would indicate that the students as a group believe it to be unlikely. Yet despite such a critique, underneath these comments lie their attempts to discern what skills they will have as future lawyers. That is, in the very act of describing those (albeit ‘unrealistic’) attributes observed in television lawyers, students are becoming involved in the process of identity construction. In their talk, the students reveal what they believe is the basis for competent lawyering and the way they see themselves in the future. As one student puts it, television lawyers are ‘people who ... everybody want[s] to become’.²⁷

B Status and Lifestyle

In addition to isolating characteristics and skills, the lifestyle and perks were also very attractive to the students. One student said that lawyers on television are always ‘so intensely having a good time’, and the fact that television lawyers’ lives are so busy and full ‘would be a really good way to live’.²⁸ In particular, to these students status is one part of the aspired and expected lifestyle that is very important to them.²⁹ At one point a student says that the social status and money is what she admires about television lawyers and then later describes her reasons for watching legal dramas to include the fact that ‘you see these, powerful you know, like *higher than everyone else* people and they’re really rich and they’re really interesting, ... they’re *happy* and

²⁷ FG 1, Alex, 30.

²⁸ FG 7, Craig, 5.

²⁹ Interestingly, the concept of status as a desirable part of being a lawyer was either directly raised or indirectly discussed by each of the students at one time or another.

you think I'd love to be like that'.³⁰ To this student, there is a connection between wealth, status and happiness, with the first two producing the third. As such, lawyers on television have a status that is to be aspired. Such a transformation of understanding about lawyers is not unique to this student. In other transcripts, students make references to expectations of social superiority as this next exchange shows:

So what sorts of tasks do you think you're going to be doing as lawyers?

Craig: Driving fast cars and that stuff. [*Laughter.*]

Tara: Wearing designer label clothes.

Beth: Going through so much ... paperwork.

Tara: You know you're not going to be reading all the time, by the time we've probably done five years of it we're all going to be wearing really thick glasses.

Matt: Yeah.

Craig: You've still got that image of you being the top and everyone doing the reading for you and stuff.

...

Tara: ... it's probably a little bit of a social sort of step up like you get like a social standing, you get to actually um mingle with people that are a higher level.

Matt: People want you to be on their team in trivia nights.

Tara: Yeah.³¹

This interaction is intriguing for a number of reasons. First, the students refer jokingly to the stereotypical images of lawyers – fast cars and designer clothes – and yet at the same time it is clear that they have no doubts that this is all tied in with the status they expect to be afforded in the future. This was evident in other groups too. When asked what characteristics they admired about television lawyers, one student in particular replied 'the Mercedes out the front'³² and the others dutifully laughed. These students find admirable the wealth and prestige of lawyering, and again the laughter within the group signifies that although they know it is a shallow attitude, for the most part they believe it to be an inevitable and not entirely unwanted part of the job. This however is not entirely unexpected. As Allen and Baron have recently argued, first year law students' ambitions on entering law school 'are already

³⁰ FG 10, Maria, 21.

³¹ FG 7, 21–2.

³² FG 1, Alex, 14.

primarily extrinsic since [they appear] to be seeking money and status'.³³ Yet it is rather curious how they construct and express their understanding of what 'status' will actually mean for them as lawyers. Note the second intrigue of the extract above illuminates what becoming a lawyer to these students actually involves – it means mingling in a '*higher level* of society'. It involves possessing powers of delegation, so even though they have (what they believe to be) realistic expectations of a heavy involvement with paperwork, their superiority allows them to offload their tedium to others lower on the scale.

This expectation of social superiority is a popular discussion point for students in other groups too. One student outlines expectations of doing tasks that 'the normal Joe Blow out there doesn't really know' how to do or could possibly do.³⁴ Another student reflects on television portrayals and argues that even the 'bad' lawyers produce awe in the viewer because 'there's this separation from what the lawyers are able to do that other people wouldn't be able to do'.³⁵ In yet another instance a student describes how television lawyers help the 'average' person who needs someone to trust and to represent them.³⁶ In using words like 'average' and 'normal Joe Blow' the students are identifying what they perceive as a distinction in society. As one student observed: 'You either are one [a lawyer] or you're not one and to get there, there's a bit of respect in it because you've got to do all this education to qualify' and television dramas represents a 'job that... sort of separates people'.³⁷ Although status is something that student's reference regularly, at times they do not seem able to articulate the idea of prestige beyond the notion of separating social classes:

Kylie: The status and intelligence, sort of yeah the passion for what they do is pretty cool.

What do you mean by status?

Kylie: Like how, like they're portrayed as being sort of you know upper class ...and um the high society sort of job you know whereas a labourer seems to be more a lower class,

³³ Judy Allen and Paula Baron, 'Buttercup Goes to Law School: Student wellbeing in stressed law schools' (2004) 29(6) *Alternative Law Journal* 285, 288.

³⁴ FG 7, Jess, 19.

³⁵ FG 8, Maddie, 8.

³⁶ FG 9, Wendy, 5.

³⁷ FG 9, Wendy, 14.

sort of less prestigious job ... Prestige is a good word for it. The lawyer prestige. That's a cool word.³⁸

To first year students, status is associated with the exclusivity of lawyers who are 'highly intelligent'³⁹ and interested in maintaining their 'image of supremacy',⁴⁰ and it is in this way that they place significant value on intelligence as creating prestige for the lawyers on television. In this next extract the students have been asked why they enjoy watching legal and as they interpret the lives of television lawyers the students' implicit understandings and desires are revealed.

Dave: I guess to me it sort of romanticises the legal profession and I guess you know you feel like this is sort of what you'll probably end up doing.

Kylie: ... and they're all rich and wear nice clothes and ...

Dave: That kind of makes a status symbol ... of being a professional.

Kylie: And they seem to have a bit of respect around them in those sort(s) of shows too.

Dave: And they're not really trashy, like normal drama ... which I like.

What do you mean by trashy?

Dave: Like melodrama, I hate melodrama. Like *Home and Away* and all that sort of garbage.⁴¹

To Dave, the thought of being a part of the romanticised legal profession is appealing and this involves the element of professional status. Kylie's exchanges contribute to this construction of lawyers on television by adding the commonly desired elements of wealth, style and respect. The 'status' of the lawyers as depicted in the television shows also seems to elevate the status of this genre in the students' eyes above what Dave has termed 'trashy' soaps. It could be argued that although legal fiction on the small screen would be classified generally as 'normal' drama (incorporating of course elements of melodrama as most television is wont to do), the desire to maintain the superiority of professional lawyers invokes in this student an emotive evaluation that legal dramas must be completely distanced from other genres on television simply because it deals with lawyers. Here the students are illustrating their construction of

³⁸ FG 5, 6.

³⁹ FG 7, Jess, 22.

⁴⁰ FG 7, Rob, 22.

⁴¹ FG 5, 2. *Home and Away* is a half-hour Australian soap opera that is aired daily during primetime on the Seven Network. It began in 1988 and is still running in 2006.

identity in action. That is, by articulating their desires for the same status as television lawyers students are building their identity from points of difference in relation to social standing. That students utilise polarisation to mark legal identities is taken up in more detail in Chapter 8, but for now it is interesting to note that the importance of status to students is quite clearly articulated in the way the students refer to the benefits they already receive now that they are studying law. When one group was asked why they wanted to study law, this is the answer they jointly provided:

Alex: It's the prestige of studying law.

Ava: Yeah it's more prestige like if you say to someone—

Alex: 'I'm a law student.'

Ava: They go yeah right, and you say I am a law student, they're like oh wow, you must be so smart, you're going to make so much money and—

Tom: And ... the policeman lets you go when they pull you over for speeding.

Ava: Yeah, you just like immediately raise up in people's eyes when you say I'm a law student.⁴²

Students, especially in their first year, enjoy being held in higher esteem by others because they are in law school. Notice how Alex and Ava seem to be sharing the one thought process as they mutually feed off each other's contributions. Together they paint the picture of enjoyment as they tell others of their prestigious position as law students. What a fantastic story Tom tells (which the others ignore) of being able to manipulate the law for themselves simply because they will one day be lawyers. Why aren't all police so generous to legal practitioners?

Another focus group had a similar interaction at one point that again reveals law students' belief that they have already achieved a high level of social status. One student was most happy and 'proud'⁴³ that as law students they 'get [their] own section of the library – it kind of makes you feel special'.⁴⁴ Other students argued that status is a reward for travelling down the hard path of study and education not suitable to the 'average person'.⁴⁵ They have an expectation that after years of 'doing

⁴² FG 1, 36.

⁴³ FG 7, Jess, 20.

⁴⁴ FG 7, Jess, 19.

⁴⁵ FG 7, Tara, 21.

all this hard work we will get some sort of status. We get letters after our names for goodness sake ... how cool is that!’⁴⁶

Even when acknowledging that television representations may distort and exaggerate the true nature of legal status and prestige, student comments reveal that they just cannot escape the allure of a glamorous legal lifestyle. Each of the preceding examples illustrate the idea that being ‘special’ is very important to first year law students. One student described his family reaction to him starting a law degree in that they visualise him as the title character in *The Guardian*. Although his response is to argue that the representations are not very real, he self-reflectively admits that there is an attraction to emulating that lifestyle: ‘[Y]ou still have that image of yeah he drives a nice BM, and has the money too, so that would be cool’.⁴⁷ Another student also confesses the influential nature of television’s portrayal of a glamorous lifestyle despite her assessment that in comparison with her father’s legal experience it is unrealistic:

Simone: Um, well I mean even though ... I’m influenced by these *glamorous* lives that they seem to live like my, my dad’s a lawyer and I just know that it’s so unrealistic even though it’s attractive ...

So, if you know it’s unrealistic ... why do you say that it influences you?

Simone: Because, I think oh you know wouldn’t that be fun to live like that ...just you know in lots of the shows they portray these lawyers having lots of money and ... like still being under stress but still living the high life like in *North Square*, they were all rich and you know ... were happy.⁴⁸

Television lawyers are appealing to the law students because they represent that happiness is effected by earning a high income and being a part of what one student

⁴⁶ FG 7, Tara, 20. And yet another student explains that the reasons for transferring to a law degree are based on wanting to ‘make heaps of money and have the status of being a lawyer’: FG 7, Rob, 20.

⁴⁷ FG 7, Rob, 14.

⁴⁸ FG 2, Simone, 8.

terms a 'racy lifestyle'.⁴⁹ This is most evident in the following exchange from one focus group, where the students were asked to share the expectations they have of life as a lawyer:

Matt: Still glamorous, ... there's still that element of lawyers can earn lots of money; lawyers can have a good life ...

...

Rob: ...make heaps of money and have the status of being a lawyer.

Jess: Do you honestly think that when we're out it will be glamorous?

Craig You can hope ...⁵⁰

By questioning the group about the expectations they have outlined, Jess encourages them to be self-reflective about their assumptions. It is in Craig's response that we see the dreamy hope of students encapsulated. It is this hope that leads them towards desires and subsequent expectations of living a very comfortable high life as a lawyer. In this section I have argued that first year law students take seriously the aspects of high social standing and glamour as two contributory aspects to the legal identity they are constructing. As students begin to construct their legal identity, the desired glamorous and happy lifestyle is ideally linked to specific characteristics such as good looks, style, wealth, success, fighting for a cause they believe in and achieving a life balance in all these things.⁵¹ Although they do not indicate how they expect to achieve such a balance, students simultaneously desire and expect that these aspects of a television lawyer's lifestyle and status will be a natural part of their chosen career. The next section of the chapter however outlines the implicit and paradoxical desires students have for altruism.

⁴⁹ FG 2, Jenny, 7. Another student made the comment that television portrays the legal profession as glamorous, and when asked to explain what he meant by that term, he referenced aspects such as 'good income, nice cars, nice partner ... [and] well-to-do sort of lifestyle': FG 3, Mike, 16.

⁵⁰ FG 7, 20.

⁵¹ FG 2, 12.

III IDEALISTIC ALTRUISM

Based on the analysis above, one might think that first year law students are driven purely by self-regard, greed and shallow elitism. However, the analysis of their talk unearths a much deeper and more selfless aspect to the expectant desires they have of their future careers. Even though it may not take the form of explicit narratives, student discussions paint a picture of professional legal identity that is idealistic – it is a life where social altruism is an active goal, involving (among other things) human empathy and a high standard of ethics. For example, in the following extracts the students comment on the character of Ed⁵² as a lawyer whose life and work represent the ideal:

I love Ed, I think he has the best life ... *I know that it's not realistic* but that would be ideal I think ... Like he's helping people and he's making sure justice is done and they're interesting quirky cases ...⁵³

Ed would probably be seen as a good lawyer because there's always these people coming in and they're ... people who've been hard done by, and often it might just be smaller cases too and ... it's not about the money, it's just these little injustices that he knows he might be able to change and help them have a happier life.⁵⁴

Students often referred to altruism as an important motivation behind entering the legal profession. When discussing the television lawyer's admirable qualities, the students revealed that their emerging legal identity is confluent with ideals of 'making a difference' through their work. Using the television lawyers as a springboard for personal story production, the students seemed to share an understanding that lawyers should have a basic interest in helping others. Overwhelmingly the students in this study described one admirable quality of

⁵² Ed is a lawyer who practises law in his concurrent business, a bowling alley, in the American television show of the same name. (Like *Ally McBeal*, this show trades on its quirky and comedic approaches to the practice of law.)

⁵³ FG 9, Wendy, 3.

⁵⁴ FG 2, Jenny, 13–14.

television lawyers to be their ability to ‘fix something’ or to ‘put something right that was once wrong’.⁵⁵ Despite their attraction to high incomes in this career, the students shared an understanding that the base requirement for a lawyer has to be an interest in helping others: ‘... like being able to talk to people and find out their problems and actually help them’.⁵⁶ One student tells how this altruistic requirement is evidenced in many television shows including *The Practice* and *The Guardian* where the lawyers are always trying to do the ‘ultimate’ good and are ‘always doing something big which you know is for the greater good of society’. Similarly, another student relates it in this way: ‘the fact that they’re actually making a difference, that’s a big thing for me ... you know there’s not that many jobs I guess where you can go out there and make a real difference in people’s lives’.⁵⁷ And yet another romanticised expectation is expressed in this disclosure: ‘I mean the money would be good but not to compromise what you really want to do and help people ... if you have to compromise that to earn money then sometimes it’s not really worth it’.⁵⁸

Based on the recognition of such admirable qualities, the students have a positive understanding that lawyering by definition should involve helping to effect social change. This next extract is indicative of such a shared interpretation:

- Rob: Because it’s people’s lives, ... that five minutes that you spend in court, that’s someone’s life you’re dealing with.
- Tara: Even if it’s not court, even if you’re still sitting in your office like family law or.
- Rob: Or corporate law
- Craig: Or in the library looking up...
- Tara: *You’re* still making a difference.
- Craig: ... Case reports *you’re* still making a difference...
- Tara: And people ultimately, they look up to *you* because... lawyers know more than the average person. It’s like a doctor, you know you’re sick, you go to a doctor, you’ve got a problem, legal problem you go to a lawyer.⁵⁹

⁵⁵ FG 7, Matt, 10.

⁵⁶ FG 1, Ava, 32.

⁵⁷ FG 10, Isabel, 5.

⁵⁸ FG 1, Megan, 16.

⁵⁹ FG 7, 21.

When asked to clarify how they thought they would be ‘making a difference’, the students in this extract jointly provided a response which displays them spurring each other on to have altruistic aspirations and expectations – you can see the mutually aiding⁶⁰ interaction among the group as they identify the role of the lawyer together. Notice here how the members of the group are finishing each other’s sentences and feeding off each other to share an understanding or interpretation about the identity a lawyer takes on in society and about what it means to them to be a lawyer. Notice also Tara’s identification with the television lawyers. Her subconscious rhetorical use of the second person pronoun ‘you’ to describe the role of a lawyer allows her to visualise herself in their place.⁶¹ In another group, one student also used the same elements of language to articulate the necessity of idealism for effective legal practice: ‘*you* have to be a little bit idealistic because if *you* don’t have that idealism then ... *you’re* never going to be working towards the ultimate cause’.⁶²

The notion of ‘making a difference’ and ‘fighting for the ultimate cause’ was a recurring expression of the way students imagined their role as lawyers in the future. Yet they are abstract concepts that seem to vaguely describe the students’ intuitive desires for justice, and it causes one to speculate what understandings students possess about these concepts. While students seem able to quite easily picture themselves as lawyers whenever describing these aspects of altruism, there is an obvious lack of specificity in relation to effecting ‘difference’. In particular, students do not clearly identify distinct practices and activities that might be constitutive of cause lawyering:⁶³ for example fighting for broad social change, representing the needs of community or disadvantaged groups, or accepting a certain level of pro bono work. Neither do they articulate an understanding of what it would involve (in particular balancing and perhaps sacrificing personal, physical, economic and

⁶⁰ Mutual aid is a term used by Liebes and Katz, above n 2.

⁶¹ See below in Section IV where the students’ use of language in this way is further discussed in relation to ethical dilemmas.

⁶² FG 4, Emily, 19–20.

⁶³ Sarat and Scheingold contend that concurrently challenging and serving the legal profession is the practice of ‘cause lawyering’. Cause lawyering is a contested concept that generally incorporates a commitment to ‘furthering the vision of good society’ and makes ‘tangible the idea that lawyering is a “public profession”’: A Sarat and Scheingold S (eds), *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998) 3.

professional interests).⁶⁴ Instead their construction of ‘making a difference’ is vague, hollow and all-encompassing – that is, it is often used to refer to the difference they can make both for a particular client and to broadly effect social change. Although there is a subtlety in this distinction, students seem unaware of it. In the extract above, it is almost as if simply deploying their legal skills embodies cause lawyering: to *be* a lawyer *is* to ‘make a difference’. And in this next example one student paints an emotive picture of what success through altruism (both for the client, and a greater cause) would look like for them:

You know I reckon you’d get a tremendous sense of satisfaction if you were doing like the barrister role, ... and you made a really big impact and you won the case for somebody and you knew it was right and you came out knowing that you were the person that made it happen, you know that would be really good, a great thrill feeling that I wouldn’t mind ...⁶⁵

Despite an absence of specificity and description as described above, students in this study overwhelmingly seem to be constructing a professional legal identity of lawyers that is based on notions of altruism. In understanding lawyering to primarily involve helping fix people’s problems, exhibiting human empathy and a high standard of ethics⁶⁶ and setting an example for society, they are viewing themselves as good and noble persons. To them, virtue is fighting for the ‘ultimate cause’ and working within the legal system provides the means to that end. Law students’ expectations become shaped by their transformed understanding of legal identity, and from this study it seems as though our first year students want to embrace virtue and altruism in order to have fulfilment in their careers. Is this naiveté? Perhaps it is no more than a representation of the fresh idealism we expect to see in students in their first year. Indeed, this attitude towards legal work is not unique to the students in this study. Goldsmith argues that most students begin law school as ‘young idealists’,⁶⁷ and Kennedy reports that a ‘surprisingly large number of law students go to law school with the notion that being a lawyer means something more socially

⁶⁴ Carrie Menkel-Meadow, ‘The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers’ in Sarat and Scheingold (eds), above n 63, 37.

⁶⁵ FG 1, Tom, 31.

⁶⁶ See Section IV.

⁶⁷ Andrew Goldsmith, ‘Warning: Law School Can Endanger Your Health!’ (1995) 21(2) *Monash University Law Review* 272, 273.

constructive than just doing a highly respectable job'.⁶⁸ It is also important to note that some scholars describe a 'progressive loss of idealism'⁶⁹ among students as they continue their legal education.⁷⁰ With this in mind altruism is certainly not an aspect of their professional development that legal education should discourage. If students are espousing attitudes whereby service is a key factor in lawyering then why would we want to disabuse them of such an understanding?⁷¹

In discussing the positive characteristics of television lawyers, students revealed that they are transforming an understanding of lawyering to incorporate altruism, or at least a certain standard of social responsibility. The next section of this chapter further explores this process of constructing professional legal identity in relation to the students' active practice of ethical evaluation.

IV CONSTRUCTING AN ETHICAL STANCE

In their first year of law, students are actively critiquing various lawyer stories in order to construct for themselves an evaluative framework for determining what is 'good' or 'ethical' lawyering. Contained in the law are society's most significant issues, conflicts and themes as well as abstract notions of love, honour, loyalty and the human condition.⁷² As part of a large viewing public, students are exposed to these legal themes via popular culture's exploration of 'the potential for the clash of two opposing forces which may be portrayed as good/evil, right/wrong, moral/immoral'.⁷³ In this sense, law or crime dramas are like morality plays that mark out the boundaries of what is and is not allowed, assuring us that such boundaries are well 'policed'. The adversarial nature of our legal system manifests this demarcation of boundaries with a strong connection between law and drama, and with lawyers

⁶⁸ Duncan Kennedy, 'Legal Education as Training for Hierarchy' in Kathy Laster, *Law as Culture* (1997) 9.

⁶⁹ Goldsmith, above n 67, 274.

⁷⁰ See for example Goldsmith, above n 67, 273; Robert V Stover, *Making It and Breaking It: The Fate of Public Interest Commitment during Law School* (1989); Robert Granfield, *Making Elite Lawyers: Visions of Law at Harvard and Beyond* (1992).

⁷¹ This of course depends on one's own values and some may not agree.

⁷² H Newcomb, 'The Lawyer in the History of American Television - an Overview' in D. Gunn (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1992) 39.

⁷³ Steve Greenfield and Guy Osborn, 'When Cultures Collide: The Characterization of Law and Lawyers in Film' (1995) 23 *International Journal of the Sociology of Law* 107, 112.

represented as major players in the resolution of two-sided disputes. It is no mere coincidence then that law students in first year reference neat categories of polarised television and film lawyers when discussing the characteristics and ethical stance of lawyers.

At its simplest level, this polarity can be described in terms of student comparisons between the ‘good’ or moral lawyer, and the ‘bad’ or immoral lawyer. And to use their terms, they contrast the ‘sharkish’ lawyers devoid of ethics with the selfless lawyer who, as stated earlier, just wants to ‘make a difference’. At a deeper level, law students in the early stages of their studies use strong emotive language and imagery to clearly polarise the lawyers with whom they identify. The first pole of imagery invokes negative attributions of infidelity, dishonesty, guilt and immorality, while the second pole is symbolised by traits that reflect pure intentions and unquestioned ethics – that is, characteristics of faithfulness, honour and virtue. As they symbolise the polarity between two extremes, to which version do law students aspire or attribute themselves in the future; or do they recognise that being a lawyer may often involve blurring the line between rigid purity and flexible transgression?⁷⁴ This section of the chapter argues first, that new law students utilise the presentation of the binary tensions in legal dramas to construct professional legal identity that prioritises virtue, and second, that there is nevertheless a recognition of what, following Simon,⁷⁵ I have called ‘transgressive’ practice.

A Identification Through Polarised Ethical Lawyering

Using a critically analytical approach to the data in the transcripts, an argument can be made that the students reveal implicitly in their talk a process of moral evaluation that they apply to television lawyers which uncovers the ethical standards they expect of lawyers in general.⁷⁶ When describing the aspects of lawyering that they find appealing, one student describes the nature of a television lawyer’s job to be where

⁷⁴ See Simon, above n 3, who argues that lawyers in popular culture display a transgressive ‘moral pluck’.

⁷⁵ Ibid.

⁷⁶ Chapter 8 defines the terms ‘ethics’ and ‘morality’ and explains their relationship within legal education.

the consequences are always a big deal: ‘always big cases like saving a little kid’s life’ or ‘getting *someone innocent off* a murder charge’.⁷⁷ In trying to understand and interpret this aspect of a lawyer’s job, the student makes a moral evaluation that uncloaks his construction of meaning about the role of a lawyer. In his understanding a lawyer should represent the ‘innocent’. As part of doing a job that carries great import, this student makes the assumption that it is only the innocent that lawyers should work for. This is seen further in the following exchange:

Jess: Yeah you never see lawyers on television being like sly or underhanded.

Rob: And if they are, they’re the bad lawyers like they’re ...

Jess: Yeah.

Rob: Representing a murderer or something ... or the big corporation.

...

Tara: And *you go I’d never be like that*.⁷⁸

This was part of a discussion on the admirable qualities of television lawyers and you can see that Jess and Rob agree that while there are some ethically challenged lawyers on television, they only seem to represent certain types of clients – the guilty and the corporation!⁷⁹ Feeding off that interaction, Tara then seems to conclude for the group that this is one aspect of lawyering that none of them would want to participate in. There is a big distinction here between ‘lawyers’ and ‘bad lawyers’. Students seem to place positive meaning on the term ‘lawyer’ as a divergent position from that of the ‘bad lawyer’ (from whom they are quick to disassociate themselves). Indeed within their understanding, lawyers that aren’t ‘bad’ are ones who always represent the innocent. When asked to clarify what they meant by such an amorphous term the students primarily described a disregard for ethics and purely selfish motivations as necessary indicators to attracting the designation ‘bad’. To them, it is this ‘type’ of lawyer who will represent the guilty. It is the use of the evocative descriptor ‘murderer’ that indicates the students’ passing of legal and ethical judgment on a client charged with murder, and subsequently the ethical judgment passed on the lawyer: guilty murderers are in need of representation from those

⁷⁷ FG 7, Rob, 5.

⁷⁸ FG 7, 13.

⁷⁹ See n 94 and accompanying text for further discussion of the connection between ‘bad’ lawyers and corporate law.

lawyers who are ‘sly’ and ‘underhanded’. In another group discussion, the students see the lawyers in *JAG* as good lawyers because they ‘always defend people that are truly innocent’ and the bad lawyers are the ones who keep defending murder suspects.⁸⁰ The students are constructing for themselves a legal identity that does not contemplate representing guilty clients, nor the use of unethical practices necessary to defend them.⁸¹

The students’ attribution of moral judgment in this way is further evident in the language used whenever students make comparisons between a good and a bad lawyer. In discussing the qualities of a ‘good’ lawyer, they argue that it is necessary to have a strong ethical stance and to ‘be in it for the right reasons ... like there’s no use practising law if its just to get money because I don’t think *you* will be a good lawyer’.⁸² Indeed, when talking about the characteristics of ‘good’ lawyers students recognise a need to be passionate about the profession, empathic, confident and to practice for the betterment of society. Yet there is a clear agreement among the students that, despite these attributes, the only necessary element to being a ‘good’ lawyer is a high standard of ethics:

There’s being good at what they do and the ones you actually think is a good person, I mean all of them in *The Practice* are really good at what they do but I wouldn’t necessarily want to be like all of them are because I don’t think that their motivations or their values, I don’t agree with so they might not be like good lawyers but they are good at what they do.⁸³

There is a nice simpatico here with the way Asimow defines good lawyers as portrayed in the movies. He argues that a ‘good’ lawyer is ‘one that you want *both* as your friend (meaning you see the lawyer as a good human being) *and* as your lawyer (meaning the lawyer appears to be competent, ethical, and dedicated to clients)’.⁸⁴ Ava’s identification lies with those lawyers who comply with this definition. That other students share her view is further evident in what they actually say linguistically

⁸⁰ FG 7, 10.

⁸¹ Perhaps an alternative interpretation is that law students have a strong faith in the legal system. That is, it could suggest that law students view the legal process as ‘getting it right’.

⁸² FG 7, Craig, 15.

⁸³ FG 1, Ava, 21.

⁸⁴ Michael Asimow and Shannon Mader, *Popular Culture: A Course Book* (2004) 53.

– as indicated earlier, in much of the way they describe the identity of a lawyer, the students use the second person pronoun ‘you’ to associate themselves with positive and ethical examples of lawyering. It is as if they are describing the ethical actions of lawyers in the way they want to see themselves. Take for example this comment from a student who is able to relate to the ethical dilemmas often facing lawyers on television:

... [Helen Gamble on *The Practice*] sort of grapples with issues that I ... imagine *you* would actually have to grapple with at some point, like you know how far do *you* go in questioning a child for their testimony ... that sort of thing I can sort of see coming up in day to day so I can relate to that and say that makes a good lawyer.⁸⁵

In contrast, in their discussion of what they perceive to be ‘bad’ lawyers, students use the third person pronoun ‘they’ to disassociate themselves from the ‘bad’ lawyers. They don’t want to be identified with these types of lawyers who they describe to be disorganised, unethical, incapable, immoral, untrustworthy and unsuccessful – or successful but ‘working for the wrong types of people like lawyers for tobacco companies’!⁸⁶ It is through their subconscious use of language that it is possible to explore student desires in terms of the type of lawyer that want to be; and the lawyers these students want to be are the ones who represent only the innocent.

This aspect of the students’ identity construction is also evident in the way they talk about the recurring narrative that television lawyers are often personally conflicted when representing clients they know to be guilty:

Donny: Just like ... with Bobby [from *The Practice*] he’s always ... defending the people who have done something wrong and they’re always trying to get these people off, like just having to, knowing someone’s guilty and to still have to try and find some way because you’re employed by them to get them off, is just, you can see how hard it is for those guys that have to do it.⁸⁷

⁸⁵ FG 4, Molly, 20–21.

⁸⁶ FG 7, Matt, 16.

⁸⁷ FG 6, Donny, 3.

Kylie: ... especially on *The Practice* where you see the defence lawyers where ... they're trying to defend a murderer, but then they find out that they did it, and they've still got to get up in court and put up a defence for them and try and win, and the moral issue of sort of do you let your enthusiasm slide, and try and get them convicted or still go for the win.⁸⁸

In both these examples, the students describe the difficulties television lawyers must face when they are representing the guilty (especially when dealing with the charge of murder). Here the students are sympathetic to the plight of the defence lawyer and yet their language reveals a lack of understanding of what legal representation actually involves. By discussing the prevalent theme of morality in television legal dramas, the students are identifying what they consider to be a morally confronting situation of defending a 'murderer' who is actually guilty. Interestingly, the second student questions the options available if the truth about a client's guilt was to be discovered. The alternatives she presents are to 'lose enthusiasm' and relinquish effort, or to still try for the 'win'. This student does not seem to acknowledge the more appropriate alternative of fulfilling professional responsibility by working to her best ability regardless of guilt or innocence. The answer to situations like this they also find on *The Practice*, where the lawyers' tenacity is admired because they are prepared to be emotionally detached despite feeling conflicted about their client's guilt:

... they're always sort of prepared to go the ... full mile just to help out their client ... like in *The Practice* they get into these little moral conundrums about their clients being guilty or something but they sort of put that aside and they just sort of do the best that they can do by just looking at it blindly I guess without getting too emotional about it.⁸⁹

It would seem that students are very keen to create for themselves an ethical position on which to base their future legal identities, even despite lacking sufficient understanding of the essence of legal representation, or the nature of ethical awareness. Yet this is an important process of development to be welcomed by legal education. That is, by evaluating the actions of fictional characters on television legal

⁸⁸ FG 1, Kylie, 26.

⁸⁹ FG 1, Joanne, 15.

dramas, these first year students take part in the process of assembling a picture of the legal identity they will assume. What a great platform from which to explore student identity construction! In the next extract, while displaying a clearly deficient understanding about the defence/prosecution distinction, this student articulates quite vehemently a desire towards effecting social justice.

... one of the things that TV has directly influenced me in [was] ... I'd be very interested in prosecution because that way I can kind of decide whether I'd prosecute someone, you know and or not to, you know if it was obvious that they were, they were innocent then you could let them go you know or you wouldn't push it or whatever, but you would, you would if it was if it seemed on the face of it that they were obviously guilty ... Whereas in defence you know you'd have to take any, any scumbag that came along so to speak.⁹⁰

Dan is interested in taking on the identity of a prosecutor because of a belief that unlike defence lawyering, this position would involve a generous exercise of discretion. In this way, the student could ensure that the 'innocent' were protected and only those who were 'obviously guilty' were actually prosecuted. It is fascinating to note again, that there is no acknowledgment that the law has any part to play in the decision of whether to prosecute criminal defendants.⁹¹ In Dan's interpretation of being a prosecutor, it is the application of a personal and arbitrary moral judgment that drives discretion, rather than the specific and legal requirements set out in detailed legislation and learned in legal training. In this example, the position of the prosecutor is juxtaposed with that of the defence lawyer, who, according to this student, must take on any morally questionable character ('scumbag') that comes their way.⁹² The student so keenly wants to take on the legal identity of a lawyer who

⁹⁰ FG 4, Dan, 28.

⁹¹ The *Prosecution Policy of the Commonwealth* is a public document that has been tabled in Parliament and sets out guidelines for the making of decisions in the prosecution process. Under the *Prosecution Policy* there is a two-stage test that must be satisfied: (i) there must be sufficient evidence to prosecute the case; and (ii) it must be evident from the facts of the case (and surrounding circumstances) that the prosecution would be in the public interest. (Each state has equivalent policies providing consistent guidelines.) See further the Commonwealth DPP website: www.cdpp.gov.au.

⁹² Generally, solicitors are free to pick and choose whom they represent – there is no obligation to accept any particular case. Barristers on the other hand, are bound by the 'cab-rank' rule. This is formulated in Rule 85 of the *Australian Bar Association Model Rules* (ABA), 8 December 2002, and states that a barrister must accept a brief if: (a) it is within their capacity and skill; (b) there are no scheduling conflicts; and (c) the fee offered is acceptable. Of course, given these provisos it is not too difficult for a barrister to avoid any particular client.

works only with and for the innocent, that they adopt an incorrect assumption about the discretion available to defence lawyers when choosing whom they will represent. Although there is much more discretion available to private practitioners in their selection of clients, than there is for legislatively bound prosecutors, this student articulates a firm desire to disassociate from all that is morally questionable.

Many students view and imagine the practice of lawyering in this polarised way – you either defend the guilty (and are immoral) or you represent or prosecute on behalf of the innocent (and are a ‘good’ lawyer with ethics intact).⁹³ One interesting aspect to this dichotomy was the frequent reference among many of the students’ comments to corporate lawyers as inherently unethical. Take this next interchange as an example:

Dave: ... you’ve got [lawyers that are] usually defending the underdog and then you see these just nondescript people who are the lawyers defending like the corporation or something and you think yeah those are obviously you know immoral, bad people [and] they like to view the changing lawyers, ... lawyers who were like sort of like blood-sucking ideology and then changed to the moral side ...

Kylie: Actually I watched *The Secret Life of Us* ... And he was working in the community service and then he became a corporate lawyer and he was saying ‘I hate it, I wanted to go back’ and I thought oh well that’s going to probably be a good image to portray to people that he actually doesn’t want to work [in corporate law] and his soul is restored if he went back.⁹⁴

Dave clearly makes a contrast between two types of lawyers: those defending the ‘underdog’ or the ‘moral side’, and corporate lawyers who are ‘obviously’ immoral and ‘bad’. He uses intriguing terminology to describe this second type of lawyer – in contrast with those on the ‘moral side’, corporate lawyers are of a ‘blood-sucking ideology’. The implication is that immoral lawyers, like those representing corporations, are parasites who feed on other people’s problems.⁹⁵ Kylie makes a

⁹³ See further Chapter 8 for a discussion of the implications of such polarisation on legal educative practices.

⁹⁴ FG 5, 16.

⁹⁵ Another student articulates this moral evaluation in this way: ‘the bad lawyer I think would be the morally worse one, the one that doesn’t have any problems with taking on, you know, a corporation

similar argument by using religious and morally redemptive imagery that working for corporations necessarily results in the loss of your soul – although it is retrievable upon re-entry into a more morally appropriate position within the legal profession, such as community service.⁹⁶

By making arguments and comments about the ethical stance exhibited by television lawyers, the students are displaying the very process of identity construction that is taking place as they concurrently begin their law studies and watch the practices of lawyers on television. On the one hand they are keen to uphold high ethical standards and do not want to contemplate dealing with those that might be guilty. One student clearly stated that she would have trouble representing ‘rapists’.⁹⁷ And another student argued that a ‘big ethical question’ for her would be: ‘how can you get up and try and get a murderer or a rapist on a lesser charge or off altogether – that’s something that would bother me’.⁹⁸ On the other hand, their comments reveal that they don’t yet fully understand or appreciate the relationship between ethics, morality and legal representation. This is most evident in the following comment: ‘A defence lawyer itself is an ethical thing because you’re defending someone who is accused of a crime and ... that’s an ethical stance that you’re taking to prove that they’re not guilty’.⁹⁹ There is simply no clarity in the knowledge they currently possess about legal ethics – to defend someone is seen by these students as constituting in and of itself an ethical dilemma. Again, it would seem that they are projecting a legal

taking out some poor people... you know, the cut-throat lawyer...which is contrasted with the good, moral, decent lawyer’: FG 5, Dave, 8.

⁹⁶ Interestingly, Granfield notes that a growing acceptance of and preference for corporate law practice by many law students over the course of their studies corresponds with the diminution of idealism that was commented on earlier in the chapter: Granfield, above n 70, cited in Goldsmith, above n 67, 274.

⁹⁷ FG 7, Beth, 11.

⁹⁸ FG 9, Tara, 10. Another student made this argument in identification with the affects that working for the prosecution could have on personal morals: ‘And if this guy gets off we’ll be releasing a killer into the community and then he’ll go murder someone and it will be on their conscience for ever that they got off this killer and he’s gone and murdered someone and you know that happens every three weeks or something and then that would get to *you* I think’. (FG 1, Ava, 5.) The students here are recognising via television stories that there are moral consequences to a bad performance on the job. Losing a case means more than just losing!

⁹⁹ FG 7, Craig, 19.

identity where to *be* a lawyer is to concomitantly be embroiled in an ethical situation. As stated by one student, lawyering is not easy to do if you have no ‘inside values’.¹⁰⁰

B *Transgressive lawyering*

Intriguingly, despite this seemingly strong polarity in identification with lawyers, the students do hint at an awareness that the distinction is not always so clear. In concordance with Simon’s argument that representations of lawyers in popular culture ‘depend strongly on the imaginative identification of the audience with their heroes’¹⁰¹ and that exhibiting transgressive ‘moral pluck’ involves ‘actively and ingeniously confronting difficult issues’,¹⁰² students do comment that some questionable practices of lawyers on television are not necessarily unethical. For example, although one student opines that as a lawyer ‘you’ve got to have a very definite view of what your role and ethics are’¹⁰³ and that there is ‘a fine line between being good and being bad’,¹⁰⁴ another student argues that there are circumstances where ‘moral pluck’ is acceptable:

in a lot of cases they tend to break with tradition and they tend to break away from their professional role and ... do things that they shouldn’t really be doing ... you know ... unethical stuff to help people but you don’t see it as bad unethical because they’re helping people that need help.¹⁰⁵

As a means to an end, transgressive lawyering is seen as not only acceptable but also important. This is most evident to the students in *The Practice*, a show that derives most of its dramatic tension from ethical challenges faced by its protagonists. It is the actions of characters Bobby Donnell, Jimmy Berluti and Helen Gamble that students primarily reference as ethically questionable, and yet students assert that these

¹⁰⁰ FG 7, Tara, 10. Chapter 8 picks up on this articulation of ‘inside values’ and shows how it is a desire for some sort of internalised ethical stance. Chapter 9 then further discusses how it can best be addressed in legal education.

¹⁰¹ Simon, above n 3, 440.

¹⁰² Ibid 430.

¹⁰³ FG 10, Isabel, 17.

¹⁰⁴ FG 10, Isabel, 17.

¹⁰⁵ FG 10, Maria, 17. Of course, unlike life, it is the ‘classic realist’ position of television itself that allows them to ‘know’ who is ‘really’ innocent or in need of help.

lawyers have strong positive motivations: '[they] manipulate the law ... for the best result ... the client's best interest is kind of their main goal'.¹⁰⁶ It is the goal of pursuing justice that leads students to deploy justifications of transgression based in the 'rule of man' rather than the 'rule of law'.¹⁰⁷ In the following extract, two students discuss the various ethical dilemmas facing television lawyers, and focus on the ways in which lawyers on *The Practice* convince clients to produce confessions:

Megan: ... informing your client of offers knowing that they're guilty ... like they'll be allowed to go free for certain information or something, like I think there was something on *The Practice* a while ago where he made up an offer – he got somebody to call him for 30 seconds or so and he made up saying that they had this offer, and the guy confessed for it when of course the offer wasn't really there, so it was absolutely wrong, *but you know* ...

Ava: There are different ways, especially like the prosecution side, ... that they'll go around getting people to admit to stuff, like the one in *The Practice* [the character of Helen] ... once this teenage girl was pregnant and she did something to herself, I don't know, if it was specifically killed her baby or something and then she denied [it] ...so she [Helen] got in the room and she sat down and said look 'I know what it's like, I got pregnant when I was your age and I had to go for an abortion', and got this woman all upset and then [she] confessed, and then [Helen] walked out and said 'I never really had an abortion – I was never pregnant'. And you go 'you lied to her'
...¹⁰⁸

It would seem that the students are using television narratives like those of *The Practice* to evaluate the ways in which lawyers act ethically. Megan, in yet another reference to the difficulty that defence lawyers face when representing 'guilty' clients, provides an example of the type of action television lawyers might take when negotiating plea bargains. Although used as an example of what the students represent as an understandably difficult situation, her evaluation is that such action by the lawyer was 'absolutely wrong'. That students place a value on the importance of honesty in dealing with clients is also seen in the comment from Ava who views the

¹⁰⁶ FG 8, Maddie, 5.

¹⁰⁷ J Thomas, 'Legal Culture and *The Practice*: A Post-modern Depiction of the Rule of Law' (2001) 48 *UCLA Law Review* 1495. Here Thomas argues that the law on *The Practice* is portrayed as arbitrary, subject to manipulation and 'post-modern'.

¹⁰⁸ FG 1, 26–7.

actions of prosecutor Helen Gamble in *The Practice* as inappropriate. Yet in a way that ameliorates the definitive nature of Megan's moral absolutism, the statement 'but you know ...' is an indication that although lying to a client to procure a confession is wrong *per se*, perhaps there are some circumstances in which lawyers would be entitled to do the wrong thing.

This acceptance of some of television lawyers' more questionable actions ties in with the earlier argument that students idealistically look forward to seeking justice in the community by representing the innocent. When lawyers on television bend the rules, or act outside certain legal boundaries, students view it as morally justifiable as long as it is for the cause of protecting the innocent. This can be illustrated by comments from two students:

I'm just thinking of that ... show ... I watched it the other week and it was like he knew that his client had done the right thing ... he didn't want to make a deal so he ended up having to do something like blackmail or whatever because he knew that his client was the innocent one.¹⁰⁹

I think Jimmy from *The Practice* ... seems to have more of a conscience even if it goes against what you're supposed to do as a lawyer, like I remember this one show that there was some sick boy [and] he wasn't supposed to let him know he was dying. I don't know what the medical thing behind it was and he wasn't supposed to breach confidentiality ... but he did because it was the right thing to do.¹¹⁰

Margaret referentially agrees with Jimmy's actions. Even though she believes legal professional regulations would not permit such a breach of confidentiality, Jimmy's disclosure was apparently the 'right' course of action. This student is relying on a personal intuitive sense of ethics to interpret the validity of the actions of these fictional television lawyers. Without a real understanding yet of legal professional obligations, the students can only rely on their personal ethics (which is validated by television) to evaluate what would be appropriate ethical responses to such difficult situations. The narratives provided by the legal dramas offer the students an

¹⁰⁹ FG 8, Maddie, 11.

¹¹⁰ FG 3, Margaret, 11.

opportunity for reflection and interpretation of their own ethical stance.¹¹¹ Interestingly, one student, Emily, expressed a slight annoyance at the way in which television lawyers appear to always be engaged in a personal battle over ethical matters:

So you feel like lawyers suffer the daily grind a lot like ... cause that's what I think comes out in, in the shows, like they've always got some moral dilemma or some spiritual crusade going on inside their soul ... Lara Flynn Boyle in *The Practice* is always arguing that ... [in] her position as a Prosecutor that she has to do something underhanded in order to ... be able to catch the criminals, and she's always in this massive malaise as to whether or not she can live with herself and the job that she does and whether she should cross over to the defence attorney just so she can win a case. And ... I get bored of it, I mean ... like yes that is the job you went into you should just deal with it.¹¹²

At first Emily critically draws attention to how television productions frequently depict lawyers as suffering the daily grind – and not because of tedious, mechanical work but because of intensely affecting ‘spiritual crusades’ and ‘massive malaise’. But then it is interesting to note the easy slippage into a referential assessment that lawyers should expect that such ethical dilemmas are a natural part of legal work. By relating to Lara Flynn Boyle as if she were real, the student makes a judgement that lawyers should be able to deal with these dilemmas because they have chosen to work in the ethically challenging environment of the legal profession. Notice the use here of the actor’s name (Lara Flynn Boyle) rather than that of the character she plays on *The Practice* (Helen Gamble), which indicates that, despite mixing fact and fiction, there is a personal expectation being transformed and presented of what would actually occur within a reality of legal practice. This expectation involves an understanding that transgressive practice is a necessary aspect of the business of ‘catching criminals’. It can further be seen in the following interpretation of the main character in *The Guardian* where the student also views the ‘grind’ of lawyers as producing transgressive behaviour:

¹¹¹ It is this opportunity that will be discussed in Part 3.

¹¹² FG 4, Emily, 4–5.

... like they've been in the grind of the system for so long, and you know at the start of *The Guardian* he [Nick Fallin] was very much a character that, that was appalled at some of the things that had happened to the children that he was defending but now, ... he [has] underhanded views ... he just takes them on and he beats them in their own game, and it's like you know being deceitful ...¹¹³

It is perceived by this student that persistent exposure to the legal system can have a demoralising and desensitising effect on lawyers, which results in the acceptance of 'underhanded' and 'deceitful' behaviour. But in discussing *The Guardian*, the student conveys that this is not necessarily seen as a bad consequence because Nick Fallin is now able to effectively defend the children against those who were previously able to get away with their behaviour.

Another student presents the argument that admirable lawyers within popular culture are those that manipulate the law in order to achieve the desired outcome of upholding a certain ethical standard in society:

I admire the ones that ... uphold moral good and all that kind of thing ... like I kind of have this idealistic admiration of Atticus Finch from *To Kill a Mockingbird* like I don't know, he just does the right thing and I like that, I'd like to be able to do that ... To go against what other people are saying and use the law for your good purposes ... But used the law to support that ... manipulated the system for good ends.¹¹⁴

Although this statement initially begins with a fairly straightforward view that admirable lawyers are those who act morally and do the 'right thing' in order to achieve 'good purposes', the student finishes with an articulation that manipulation of the law is an acceptable part of this. The implication from this comment is that an admirable lawyer is to be judged not necessarily by the success with which he/she is capable of effecting that manipulation, but instead by the purpose for which that manipulation is practised. It might be interesting to note that in this way, the purpose that is served here is not the law itself, but rather some sort of higher moral code.

¹¹³ FG 4, Emily, 6.

¹¹⁴ FG 6, Heather, 12.

Time and time again the students articulate the notion that transgressive legal practices are permissible only within endeavours that seek to protect the innocent,¹¹⁵ and this is most evident in their discussions of a particular strategy that was employed by the lawyers on *The Practice*. ‘Plan B’ was a strategic move developed by the partners as a trial tactic intended to shift blame from their client to any other person, even though they lacked reasonable grounds for suspecting them. Although it was discouraged and condemned as unprofessional by their colleagues within the legal community, the use of ‘Plan B’ was not always deemed illegal by the judge. The following interaction reflects the level of interest raised in the students by the deployment of such a strategy:

Emily: ... I like watching *The Practice* like cos there’s always some ... there’s always like sick and twisted character[s] and I like to see how they’re going to get them off ... it doesn’t mean that I’m immoral and that I side with the way they do it ... But I guess [it’s] just a fascination with what they do and how they do it

Molly: Yeah, I’d have to agree with that, the way they ‘Plan B’ to come up with sort of the alternatives ... I find interesting.¹¹⁶

Watching *The Practice* gives students a window into the ways in which the law can be manipulated. Although they are quick to articulate a distance from any morally questionable practices, students seem nevertheless fascinated by transgressive actions. Later in the discussion, the students were asked whether they considered the ‘Plan B scenario’ to be an unethical practice and Molly responded with the following statement that encapsulates the acquiescence of transgression only on behalf of the innocent:

Molly: I think only if you’re certain of your client’s guilt or innocence, if you’re uncertain ... either because you don’t know or because you’re uncertain then I don’t think that it would be acceptable to point to another person and say its possible that they did it ... but if you are certain that your client is guilty ... then I find that completely abhorrent and I wouldn’t be doing it.¹¹⁷

¹¹⁵ Note how the students never directly discuss how they will evaluate who is innocent, and who is not – it is just as if it will be self-evident to them – and this is just like it is on television (which gives us God-like knowledge of a person’s character).

¹¹⁶ FG 4, 6.

¹¹⁷ FG 4, Molly, 7.

As a defence lawyer, if you are certain of your client's innocence then it is acceptable to adopt underhanded or devious tactics in order to save them from unjust punishment. In this way, the students see the means as justified by the end result. But, in line with the students' strict moral stance we have observed so far, if you are certain of your client's guilt, or simply unsure, then it would be completely immoral to call into question the innocence of a third party for the sake of saving a potentially guilty client. This student firmly believes that such questionable practices are immoral if the client is actually (or possibly) guilty, but implies that using a 'Plan B' type strategy is acceptable transgressive behaviour when fighting for the innocent. Although of course it may not completely resolve the issue, there is again here no recognition that professional ethics requirements could provide some guidance.

As evidenced in the extract above, transgressive lawyering is only given credence when it is employed for the purposes of protecting the blameless. Students clearly disavow unethical practices that are motivated by the desire to 'make more money, or for the sake of being bad'. A renunciation of unethical lawyering on this basis is most evident in their descriptions of 'bad' lawyers, as discussed earlier, and is consistent with the altruistic desires they harbour toward legal practice. Despite this, students don't seem to be able to draw a distinction between those actions or practices that would be morally justifiable in a transgressive way, and those that are explicit ethical violations. One discussion in the focus group centred on whether it was appropriate for a lawyer to 'drop' a case if they found out that their client was lying (or worse, guilty!):

Beth: ... does that mean that when, whenever a lawyer has an inkling that someone...isn't actually telling the truth that they're supposed to drop the case?

Tara: No ...

Beth: Do you know what I mean does that make a good lawyer?

Tara: I don't know.

Beth: Do you know what I mean, like if a you were representing someone that, who you knew robbed that bank but you had to try and say they didn't ... you can't expect them to drop every case ...¹¹⁸

¹¹⁸ FG 7, 17.

Clearly a demarcation of ethical and professional practice is not easy. Students simply do not know what professional responsibility norms would require of them as lawyers, and they do not know how they would react in those types of situations. Within this context, Chapters 8 and 9 show the diverse benefits to be gained within legal education by allowing students to work through the various ethical issues they identify in popular culture.

V CONCLUSION

A study of the image of lawyers on television, and more specifically the characteristics of those lawyers, is important because ‘on that image may rest part of the willingness of law students to become lawyers’.¹¹⁹ This chapter has shown that students are readily deploying television narratives to picture the way they want to see themselves as lawyers. Using the students’ discussions, it was argued that television helps to reinforce the positive view students have of their chosen careers. By listening to the stories the students tell of their interpretations of television fiction, we can better understand their motivations and expectations and simultaneous construction of legal identity. In this chapter it was argued that in addition to the attraction of the high lifestyle, money and status, students identify with and aspire to the virtuous altruism of serving the community in fighting for justice, and upholding ethical standards. To them, a lawyer must be ethically without reproach and must have an unswerving interest in humanity. Yet although they may not understand the implications, underlying such pure desires is a latent recognition that an ethical approach to lawyering is not easily delineated, and it was argued in this chapter that students implicitly accept that ‘the way to virtue [often] involves transgression and resourcefulness’.¹²⁰

Without the benefit of practical experience or study in legal and professional ethics, first year law students are constructing professional identities from a position where

¹¹⁹ Nancy B Rapoport, 'Dressed for Excess: How Hollywood Affects the Professional Behaviour of Lawyers' (2000) 14 *Notre Dame Journal of Law, Ethics and Public Policy* 49.

¹²⁰ Simon, above n 3, 429.

what is 'ethical' behaviour has not yet been evaluated, tested and delineated. While students are picking up on the theme, as presented in television fiction, that ethical dilemmas are an everyday aspect of lawyering, their discussions reveal an extremely blurred understanding about morality and legal ethics. Nevertheless, it is important to recognise that they do use these fictional actions and behaviours, both virtuous and immoral, to transform and shape their ideas about professional identity and practice. An exploration beyond the black and white approach to ethical lawyering is therefore to be encouraged among developing law students. By revealing the students' abilities to critically evaluate and interpret television narratives, the next chapter shows why the students' unique position of transformation can enable legal education to undertake such an exploration.

CHAPTER 7

DEVELOPMENT OF CRITICAL ABILITIES AND TRANSFORMATION OF SELF

I INTRODUCTION

As law students begin their study of law, what information and/or misconceptions do they bring to this process and what abilities do they develop in order to discriminate among them? In Chapter 6 it was argued 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. In this chapter, the level of inquiry into student discussions is taken a step further to expose the subtle ways in which the students use the television narratives to approach and understand lawyering practices. That is, the focus is on evaluating the *critical abilities* of law students as revealed in focus group discussions. As described in Chapter 5, a critical reading involves an ability to discuss a program as an aesthetic construction.¹ Here I have followed the lead of Liebes and Katz who credited viewers as critical if they were able to recognise or define the constructed nature of representations. In particular the focus is on: the critique of genres, formulaic conventions,² themes or messages in the fictional narrative;³ and/or the display of 'pragmatic awareness' of the program by the students' cognitive, affective and social self.⁴ Thus I have sought to explore those *critical* articulations that reveal the subtle ways in which students use television narratives to understand lawyering. Through the process of utilising television lawyers' actions and behaviours to articulate their

¹ For a full discussion of the methods used to code critical statements see Chapter 5. See also Tamar Liebes and Elihu Katz, *The Export of Meaning: Cross-Cultural Readings of Dallas* (1993) 32.

² Tamar Liebes and Elihu Katz, 'On the Critical Abilities of Television Viewers' in Ellen Seiter et al (ed), *Remote Control: Television Audiences and Cultural Power* (1989) 208.

³ Ibid 205.

⁴ Liebes and Katz, above n 1, 115.

own personal expectations and understandings, students actually reveal their significant capacity for critical reflection and analysis of their position.

This chapter will first deal with the students' ability to question the mimesis of television fiction through recognition of dramatic function within the narrative. In doing this, the students are continuing the process of constructing 'reality' of what life will be like as a lawyer. The chapter then explores the exhibition of substantial critical ability in discerning and critiquing various themes and messaging within the program narratives. In dealing with notions of stereotyping, this section includes an exploration of student responses to the representation of gender issues, both at a conscious and subconscious level. Finally, the chapter spotlights the students' considerable capacity for pragmatic criticism, outlining their active use of the television narratives to contribute to a transformation of self.

II MIMESIS – USING TELEVISION NARRATIVES TO QUESTION AND CONSTRUCT 'REALITY'

Students in this study exhibit extensive critical ability in the syntactic domain;⁵ that is, as the students discuss aspects of the fictional lawyers' world, they reveal an understanding of the component elements of the genre of television legal dramas and the dramatic function of the narrative and characters.⁶ By utilising this criticism students are able to reflect on the 'type' or 'version' of reality that is presented within television narratives, and as they take turns challenging and rejecting these versions the students are developing an understanding about what they perceive as the 'true' nature of lawyering. Together they produce a narrative of which the central concern is defining what 'real' lawyering must be. Consider the following extract:

Megan: 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

⁵ This is the 'viewer's awareness of the text as a construction ... in its *syntactic* aspect – genre, formulas, etc': Liebes and Katz, above n 2.

⁶ Ibid.

they'll get something really juicy but you know *they don't have to cater to audiences*

...

Ava: [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.

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

Joanne: No, no, they're *always* at the bar ...⁷

The stories of law on television portray exciting legal work through weekly plot development and 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 piecing together a picture of what they believe (and expect) lawyering to be. That is, the students are identifying and formulating their version of reality. It could be seen as a naturalist approach to realism where the students use their own judgment to determine whether a given activity does and will occur in 'real life'.⁸

The students' awareness of the requirements placed on television production to make the practice of law appear challenging and exciting leads them to believe that reality will be a different alternative. In an almost derisive tone, the students in the extract 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 are a key motivator in television production, drama, excitement and tension are all necessary to attract audiences, and they use this to reflect on what lawyering must actually involve. It is this recognition that makes their reflections critical. Note how the students are also using language of absolutes to confirm the stark contrast between reality and fiction – by using the definite words 'always' and 'never' to describe the actions of television lawyers, the students are taking a stance that reality must be different.

⁷ FG 1, 3–4.

⁸ Naturalism or literal realism is one use of the concept of realism that Barker and Andre identified in their work on the role of soap opera in teenagers' identity projects. Naturalism involves questioning the appearance of reality and the plausibility of action and linear construction in terms of everyday life: Chris Barker and Julie Andre, 'Did you see? Soaps, teenage talks and gendered identity' (1996) 4:4(November) *Young* 21, 33.

This section thus illustrates the students' utilisation of television to construct reality in three ways. First, by showing how students critically analyse the tasks; second, by exploring the way they evaluate the skills and characteristics of television lawyers to continue piecing together 'reality'; and third, by discussing the students' critique of criminal law as a necessary aspect within fictional portrayals in order to achieve entertainment value (in particular the proliferation of US productions within the Australian market). The last part to this section briefly explores the discursive resources students draw on in order to make such critiques.

A Tasks

One recurring aspect of the students' naturalistic realism was the consistent refrain that lawyering must be mundane and completely lacking in excitement. In each of the focus groups the students made many such observations about the connection between the representation and reality, particularly in relation to everyday tasks of lawyering. 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'.⁹ It is interesting that this student uses contradictory language to assert her understanding of reality. On the one hand her assertion is a clear picture: real lawyering is *definitely* not as exciting. On the other hand, her construction is not so declarative: the use of the word *probably* in relation to mundane tasks indicates that the student is not so sure. Despite this tension, it is clear that an individual assessment of what is 'real' is utilised to piece together a picture of their future careers,¹⁰ and that image includes an evaluation that tedium will be the norm. Take this next extract as an example:

⁹ FG 6, Heather, 19.

¹⁰ This student was asked why she thought it would be mundane: 'Oh, I don't know just like you know how every job has it's day to day things that are like that you have to do that are boring, like on television they always seem to be doing something exciting every day.' FG 6, Heather, 19.

Megan: Television lawyers are so much more dramatic [than real lawyers]. They've got so much more excitement in their lives, and it only shows ... parts of what they do, whereas real lawyers have to deal with the mundane, everyday things as well ...

Alex: You don't get presented with the lawyers doing time sheets and that kind of thing, and having to worry about quotas or overheads – we just get shown that they're in a courtroom just going for it. It's always some high you know multi-million dollar deal, or trying to get someone off death row ...¹¹

Television lawyers are more exciting to the students but they recognise that this is specifically a result of the fact that television productions only show the more dramatic aspects of a lawyer's daily activities. Yet despite this understanding of television texts as a concentrated and exaggerated version of what occurs in real life, they still use them to make assumptions about reality. In another group, the students articulate quite passionately that television lawyers are unrealistic because they never do research and are always in court:

Vicki: ... I mean occasionally there's an interview or something with the client but ... it's just 'lets go to court and we'll just make it up on the spot' sort of thing.

Donny: The research just comes from thin air ...

Vicki: It just comes. [*Snaps her fingers.*]

Donny: Yeah it just falls out off the shelves with all their books and it opens up and they're sweet.

...

Vicki: I mean do you ever see them look at a book.

Heather: No!

Vicki: I mean they hardly ever look at them.¹²

This discussion is very interesting, not only because it shows the students' critical awareness of over-dramatised portrayals of television lawyers, but also because it reveals the students' implicit role in taking the exaggeration to new heights. That is, as they describe the actions of television lawyers, they amplify the dramatisation to an almost fantastical picture – one where magical skills seem to be a pre-requisite for

¹¹ FG 1, 23.

¹² FG 6, 5.

any lawyer. The students are using their critique of mimesis on television to dramatically interpret that their idea of reality must be completely different.¹³

This point is even more clearly made in the next extract where the students are aiding each other to reflect on the nature of effective organisation within the courtroom:

Megan: And you never see them disorganised ... the good lawyers on TV are always, they always have everything on hand and they just reach out to a stack of papers, pick up the right one and say oh you know this is the case.

Joanne: Even when they're like kind of falling apart like in *Ally McBeal*.

Megan: Yeah exactly – like they just ... sort of move their hands over the papers and they get the right ones.

Alex: Oh especially when they turn up about two minutes before the thing's about to start and counsel's just laid everything out for them. That's what I find, that a lot of the lawyers don't actually do their own work, like they come in and there's like always someone there ...

Ava: That will hand them something.

Alex: Yeah, he's done all the hard yards and then he'll just come in and take all the glory.¹⁴

In this fascinating extract, the students sarcastically discuss the fictional lawyer's ability to find exactly the right reference at the right time. Their tone belies disdain and jealousy as they both referentially and critically evaluate the television lawyer's use of 'helpers' in their research and organisation. As the students scoff at these lawyers requiring research assistance in order to be completely organised and therefore effective, they are creating an assumption and attitude that they will be different. Here, they are using their critique of reality in television narratives to position themselves as distinct from lawyers on television – they may be disorganised but they will have done the research themselves.

Because the students frequently made reference to the absence in television stories of the more dreary aspects of lawyering and consistently referred to them collectively as

¹³ Another student also picked up on the recurring message that lawyers never seem to do any research: 'Yeah, no one ever seems to be like lugging huge trolleys full of books around that you see regularly around the city and it just seems like the offices have all these pretty looking books like that, none of them have bent spines or anything and it does have the whole staged effect...': FG 4, Molly, 12.

¹⁴ FG 1, 22–23. Also note here the gendered reference by Alex to male lawyers, to be discussed in Section III.

‘paperwork’, they were often asked to clarify why they had the assumption that this comprises the total sum of the work that lawyers do.

Megan: Well not just paperwork but the thing is that ... 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.

...

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

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

Alex: 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.¹⁵

In acknowledging dramatic function and narrativity within television stories, the students reveal their belief that, because television does not show it, the mundane aspects of lawyering *must be* part of reality. To the students, if what is shown is a selective ‘constructed’ version of what a lawyer’s day is like, then a real lawyer’s career could not possibly involve such constant excitement, drama and workload. Again, in evaluating the type of work that television lawyers do, the students’ use of language belies the nature of the ‘reality’ with which they are identifying. Above, Alex’s critical assessment becomes referential in the statement ‘you’d just sort of die’. He is clearly making a distinction between television lawyers (‘pressure *they’re* under’) and real life lawyers. Alex is identifying with the latter and uses the unreality of being under the extreme pressure of television legal practice to make an evaluation that in real life ‘you’ could not survive under the same circumstances.

Students recognise quite easily that television does not depict reality and they reject most of what is represented as a result. For example, one student concludes a conversation by remarking: ‘But that’s television for you, like it’s not real ...’.¹⁶ 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, defining not what reality *is* but what reality *is not*.

¹⁵ FG 1, 4–5.

¹⁶ FG 6, Amanda, 6.

Dan: ... you know my perception from the TV that I gained was ... this eloquence of use of language and ... it was all exciting and dramatic rather than ... what it actually is. You know it's all exciting and ... there's no such thing as you know people suing one another over their neighbour's dog or something stupid like that – it's all big dramatic stuff and you know there's a big difference.

...

Emily: ... it doesn't mean that the paperwork can't be interesting ... I really like research, I really like writing my papers, I would really like sorting cases through that way. I don't think it's any more attractive, I just think it's more attractive on television. No one's going to want to watch an hour of me going through books and researching and going hey I found the solution, I found a case, I found the legislation that's going to lead into what I need to solve ...¹⁷

As the students question the exciting court-based resolution of legal conflict and legal work portrayed in legal television shows, practising law seems to involve an inverted version of the lawyer stories on television. In describing what being a lawyer will mean for them, students picture the opposite of what is told in television stories. The above comment by Emily reveals a great deal about the way that student expectations are informed by the legal stories on television, and how they can critically evaluate these narratives in light of their chosen career paths. Emily's analysis shows an ability to think outside the dramatic portrayal of law by television programs through articulating that legal activities seen as 'boring' by television producers may actually be interesting work to complete, but not necessarily for other people to watch. This level of analysis can be contrasted with the more typical student critique that simply accepts the definitions of 'exciting' and 'boring' as produced by these shows.¹⁸ This is encapsulated in Dan's reference to the tasks of 'real lawyering' as 'stupid' in comparison to the exciting activities of lawyers on television. It would seem that in their hurry to completely separate reality from fiction, the students do not necessarily stop to recognise the role that they play in perpetuating conceptions of what is mundane and tedious.¹⁹ Nevertheless, students taking part in the critical process of

¹⁷ FG 4, 16.

¹⁸ See further discussion of this issue below in relation to student critique of the dramatic representations of criminal law within the courtroom.

¹⁹ They do make two interesting assumptions: (i) that there is a 'reality' of being a lawyer that can be known (there might be many or none); (ii) that they know what reality actually is.

evaluating the presentation of reality on television simultaneously reveal part of the process by which they are constructing for themselves a version of what ‘reality’ for a lawyer must be.

Interestingly, in a context where the students are critically evaluating the degree of verisimilitude on television, they refer to the documentary as a point of comparison. Without recognition that a documentary is just another construction formulated by television producers, the students actively utilise the comparison between legal documentaries and fictional legal drama to come to an understanding about what ‘real’ lawyering will involve.

Tom: There’s other TV shows on like ABC – documentary-type law programs and I tend to watch those more now ...

Ava: I saw one of those episodes about ... how people aren’t getting fair results and stuff and they can’t pay for lawyers and all that ...

...

Tom: ... they’re obviously more realistic, well the ones I watched they were basically like filming a hearing or a court case or whatever and *so it’s real life* – it’s not you know, drama, so it’s probably not as exciting and dramatic but you get a good idea of the issues ... that the judges face and the lawyers face as well as how people aren’t getting justice and that sort of stuff.

...

Alex: A lot of those documentaries especially on the ABC like they’re all Australian so they’re ... I just find them more interesting because they’re so much more relevant to ... to life I mean they ... sort of show *the law* as such, not *people arguing about the law* if you can understand that distinction ... like they’re talking about the matters of law and how the law is affecting people, not people ... just getting up in front of a judge and saying ‘oh he should get off for you know this reason’. They never in the TV shows, they never fully explore the reason for the law, at the last minute there’s this brain wave – this flash of lightning and they come up with the answer and everybody knows what they’re talking about ... Whereas in the documentaries they actually take the time to explain it to you.²⁰

In this extract Tom and Alex argue that documentaries depicting the law are more relevant and informative for them as law student viewers. In comparing what they

²⁰ FG 1, 6–7. The ABC is the Australian Broadcasting Corporation and is the national television station that is commercial free.

view as on the one hand exciting and dramatic interactions about the law in fictional television, and on the other hand, an ‘obviously more realistic’ depiction of law’s impact on societal life, the students decide that it is the documentary that must be real. Intriguingly, the students are using competing representations of legal practice to compare and make decisions on what they believe is reality – yet it could be argued that both representations are ‘constructed’ realities within genre conventions that are created by the producers.²¹

Alex sees the documentary as portraying ‘real’ issues that both judges and lawyers face in applying a law that ‘affects people’, rather than simply depicting the dramatic elements of courtroom rhetoric. But Tom justifies his evaluation that documentaries depict ‘real life’ simply because they are not dramatic in the typical style of television fictional dramas. Also note Alex’s reflection that the documentaries are more interesting and relevant because they are Australian. The bulk of legal dramas available for student viewing is of course a product of the United States and so it is understandable that in viewing Australian documentaries about the legal system, law students might consider them to be more realistic. By acknowledging his role as viewer, Alex argues that these Australian documentaries are more relevant to life because they explain the law’s operation and application to the everyday individual, rather than ‘TV shows’²² which engage the viewer by depicting solutions to big social issues and legal problems without needing to show any explanation.

The student discussion extracted above shows that students are clearly looking for reality. They desire a sense of what lawyering will be like for them and they critically compare the fictional representations with what they consider to be reality. Their use of television stories as one tool in a search for reality also affects the way the students perceive accounts told by actual members of the legal profession:

Kylie: Like we ... had the forum for ... *Lawyers in Australian Society* ... [and] there was one guy describing what it was like for him to work in the DPP and it still kind of sounded like what it would be on a TV show.

²¹ In this sense, ‘reality’ is always seen as a representation of one kind or another.

²² Note how this student views the fictional representations as ‘TV shows’ as a divergent classification from the documentary.

Dave: He'd probably be wanting to um sort of hype it up just a little so that people don't think 'oh this is crap – why are we studying law?' sort of thing you know?

...

Kylie: It sounds good – like what you could put on a TV show.²³

The cynicism for television legal fiction is held so strongly that 'real' reports by the profession are discounted as an attempt to 'hype-up' reality. The idea of television representing a reality that is desired, but not real, is illustrated by Kylie's comment that the stories told by the DPP sounded good enough to be put into a television program. It would seem that the students are reversing the measuring task – not measuring television by reality's standards, but measuring reality according to television standards.²⁴

B Skills and Characteristics

Part of the students' critique of mimesis is also the scepticism about the skills and characteristics exhibited by television lawyers. As explored in Chapter 6, although the students idealise and aspire towards these characteristics, at the same time they are also very sceptical about the verisimilitude of television lawyers' abilities.²⁵ The following comments are just some of the many arguments made along these lines:

Emily: ... you can't imagine any barrister that goes into court being so confident and so ready for every move ...²⁶

Molly: [Television lawyers have] an understanding of every facet of the law that could be called into question [in] any given case and it seems unrealistic.²⁷

²³ FG 5, 15. The DPP is the Director of Public Prosecutions. *Lawyers and Australian Society* is a subject that deals with a variety of legal practice issues, including legal ethics, legal practice regulation, and gaining a better understanding of the varied aspects to working in the legal profession. Most students are in third year when they complete this subject, although a handful of students will be first year students in the graduate law program. This subject requires completion of two practical experience work placements over consecutive summer breaks.

²⁴ For Baudrillard this would perhaps indicate that students are participating in the 'simulating dimension of hyperrealism' – a vivid and aesthetic hallucination of the real. In this way, television acts as a simulation of real life situations, but it is a copy of something that never really existed. See J Baudrillard, *Simulations* (1983) 148; Chris Barker, *Cultural Studies: Theory and Practice* (2000) 158.

²⁵ See Chapter 6 for overall discussion of those skills and characteristics that students admire; and for the specific argument that it is despite the fact they view them to be unreal that the students nevertheless desire these attributes as part of their future identities.

²⁶ FG 4, 11.

Karen: Like how eloquent all the lawyers are and how ... they're quite intellectual, they're able to discern different things. Like a lawyer can't be stupid, ... you know to a certain degree they must be able to analyse things ... but perhaps they're just not as quick witted as they are on television.²⁸

Joanne: And they don't lose enough cases on TV.²⁹

Television lawyers are just too good! The students simply cannot comprehend that such abilities would ever be part of a normal lawyer's skill set. It is for this reason that one student critically evaluates her interpretation of lawyers on television as giving lawyers celebrity status.³⁰ In a mutually aiding and critically reflective moment, another student responds that because television portrays lawyers within such a small field of other character types ('you don't see [lawyers] above anybody else besides the criminal'), it is the students as active viewers who then take that representation and create for themselves a cult of celebrity.³¹ The placement of television lawyers on this pedestal can be seen in the following descriptions from a student who seems to be basing her perceptions not on personal experience but rather on utilisation of the television narrative in a negative sense as described above:

Ava: And just like *The Practice* ... they always have these ... brilliantly written closing defence ... and then the other person comes and brilliantly rebuts everything that they've just said and ... I don't know, I just don't think that that would happen very much in real life, that they'd have these perfectly written compassionate, like really passionate and strong speeches about why someone should or shouldn't go to gaol or something.³²

Ava: And even when there's all these other dramas going around and all these conflicts in their life and everything they'll still get into court and you know put on brilliant performances. They usually win.³³

²⁷ FG 4, 11.

²⁸ FG 4, 17.

²⁹ FG 1, 30.

³⁰ She argues that television productions 'make all lawyers look like ... celebrity': FG 7, Tara, 22.

³¹ FG 7, Craig, 22.

³² FG 1, Ava, 7.

³³ FG 1, Ava, 14.

Despite the tentative nature of Ava's conclusion that such brilliant courtroom summations are unlikely to occur in real life, she implicitly reveals an expectation that 'real' lawyers do not produce compassionate, passionate or strong arguments on behalf of their client. The use of words like 'brilliant' and 'perfect' by Ava indicate the high level of skill and ability that she is attributing to television lawyers. By painting a picture with this use of language, it is no wonder that students come to conclude that such skills are unrealistic. In yet another group one student says: 'The brilliant closing speeches which I could sit down for three hours and not be able to write something that well articulated or persuasive, the really persuasive arguments, it takes a lot of talent'.³⁴ Note here that the 'talent' ascribed by the student to the television characters is no more than that which belongs to script writers, an aspect picked up by another student who clearly makes a critical reference to the dramatic requirements of television fiction to question whether it was possible to ever measure up to obviously 'scripted' characters: 'the way they're represented sort of makes me think ... what if I couldn't do this, because you think it's obviously all scripted so they know what all this means'.³⁵ It is because of and not despite the fact that the television lawyers' abilities are scripted that forces this student to actively question their potential to act in certain ways once in the real world of lawyering.

C Entertainment Value of Criminal Courtroom Dramas and the US Influence

Another aspect to the students' critical evaluation of the way law is presented on the small screen is their recognition that what is shown is primarily criminal law as practised within the courtroom.³⁶ Students easily criticise this narrow portrayal of legal practice as directed purely towards securing commercial benefit through maintaining viewer interest. The students identify that criminal litigation is the key to attracting audiences as it provides the appropriate backdrop for the unrealistic hype, excitement and dramatic tension viewers love to watch. 'I mean are you gonna sit

³⁴ FG 1, Ava, 20.

³⁵ FG 8, Maddie, 12.

³⁶ For example, one student indicated that television only shows one type of lawyer – the 'criminal': FG 6, Amanda, 6; another suggested that what is presented on television is law that is 'all about being in court': FG 1, Katie, 27.

there for an hour and watch some litigation about some commercial you know people, that's not entertainment'.³⁷ In many of the groups, students also questioned the presentation that television lawyers only ever work in courtrooms. As one student stated, 'I always thought that you know all lawyers had to be barristers and had to go work in court because that's all you ever see on TV'.³⁸ Other students also criticised this lack of authenticity:

Megan: I think they always seem to be criminal law as well ...

Alex: Well see that's the thing it's in so many of the law shows it always is in court you know, and if they do have the meeting it's always like 'I don't accept your offer and we'll see you in court' you know and then they go into the court room, so it's like you never get the whole mediation or alternative dispute resolution ...³⁹

These comments reflect an acknowledgement that television does not portray lawyers practising outside traditional legal arenas and indicate that students do understand that there are many avenues for trained lawyers to move into. In reflecting on the prevalence of courtroom narratives Alex utilises his current understanding of the law to comment on television's correlation with reality. There is recognition here that practising law is not limited to courtroom advocacy, or to an application of criminal law, but that it also does involve the mediating of all types of disputes and claims using alternative methods. The students' budding legal knowledge is only in infancy and so as the next extract shows, the students bring their general knowledge to bear on interpretations of reality as portrayed on television.

Jenny: ... like it's not [real life is not] really about that [litigation] ... I don't know what the percentage is, but I'd be surprised if 10% actually goes to court, the rest of it's outside and you don't see any of that outside just because its not interesting to see it's just like little things like conveyancing and ... wills and stuff like that ...

Simone: Contracts.

Jenny: Yes ... you don't see any contract law or anything like that on television ...⁴⁰

³⁷ FG 6, Vicki, 6–7.

³⁸ FG 1, Megan, 9.

³⁹ FG 1, 13–14.

⁴⁰ FG 2, 15.

Without evincing any foundation for assessing the degree of verisimilitude on legal dramas, Jenny assumes that what is shown can't be reality. By admitting a lack of certainty about the statistics of cases which progress to litigation, she throws a hesitant and unsubstantiated figure out into the discussion as a way of proving that television does not present the whole picture of the work a lawyer does. Jenny, with the help of Simone, reflects that this whole picture is neglected because most of it is uninteresting for the viewer. In another group, the students argue that lawyers are rarely seen interviewing clients unless it serves the purpose of dramatic or emotional effect, and one student responds: '... I mean like that's just techniques of the TV shows ...'.⁴¹ Again, students are showing that they are critical of the reality portrayed because they have an understanding of the dramatic function of television narratives. As a television literate generation in an extremely visually literate culture, they recognise the producer's need to show only that which provides conflict and tension, and they conclude that the less dramatic aspects of a lawyer's daily activities (such as a basic client interview) would not make good television.

One interesting aspect to the students' critique of television's distortion of reality is that they seem to blindly accept the message that all other aspects of lawyering aside from litigation will be boring. Students assume that if there were other exciting aspects then it would be featured and so they are very quick to identify that television programs are designed for entertainment value and therefore present a skewed perspective on the types of legal disputes and remedies used by lawyers. Yet, they do not challenge the definition of 'boring' as marked out in the productions. For example:

On TV too they're always in court, they're never doing things like wills or property transactions because it would be really boring to watch but that would be a lot of what solicitors really do isn't it? Like property transfers and wills and probate and that sort of stuff.⁴²

⁴¹ FG 1, Ava, 22.

⁴² FG 3, Scott, 9–10.

Although these students are aware of the selective nature of television depictions of legal disputes, they are actively forming a construction of non-courtroom activities as ‘boring’.⁴³ In the extract above Scott exhibits an attitude that is uncertain about this interpretation – asking a rhetorical question of the group and mediator about the daily tasks of a lawyer – and yet the assumption that drives this student is that such tasks are and will be boring. One might wonder how students with such assumptions still construct an identity of idealistic altruism as discussed in the previous chapter. Again, we can see the television narrative working in a negative sense on the students’ construction of reality – that is, because fictional television glorifies and dramatises the exciting nature of courtroom battles, all other aspects of a lawyer’s practice must be boring.

1 *The US Influence*

It is argued that in their search for what is real about lawyering, students compare Australian and American productions, and even though Australian legal dramas are equally fictitious constructions, students perceive them to be ‘what it is probably more like ... [in] the real world’.⁴⁴ This comes from a perception that, as products of Hollywood, US legal dramas must be less realistic. In making these comparisons it is interesting to note that the students distinguish themselves from the general Australian public and reflect on the impact of unrealistic American television narratives on perceptions of law in Australia:

I think a lot of people don’t really know much about the Australian legal system, [they] go to court and go ‘how come people are wearing wigs’ you know, *they’ve* seen all this stuff on American TV ... and *they* know more about the American legal system than they do about the Australian legal system ... Like *they* want to know where’s our Bill of Rights ...⁴⁵

In this instance, by using the third person pronoun ‘they’, Vicki places a distinction between herself and other viewers in order to identify with their position at law

⁴³ Although see 7.1.1 for an exception where one student actively challenges this assumption.

⁴⁴ FG 6, Amanda, 16, speaking about locally produced *MDA* (‘Medical Defence Australia’), a show centred on lawyers defending doctors for medical negligence cases.

⁴⁵ FG 6, Vicki, 17.

school (or even as a future lawyer). It is on this basis that the assumption is made that the Australian public is misled by US dramas, which are not only unrealistic but also unrepresentative of true Aussie lawyering.

The students further make the point that the Australian prime-time schedule is flooded with US dramas: ‘... the majority of the shows we get are American shows ... so we’re sort of getting the American influence’.⁴⁶ Certainly, the US productions, which completely outnumber the Australian shows, comprise the bulk of what students voluntarily raise as discussion points in each of the focus groups. Because they perceive the representations to be different in each jurisdiction, the students’ automatic conclusion is that the ‘less glamorous’ Australian productions are more real. Take for example this comment:

... [There is] some reality in what you see on TV, I just think particularly the American legal shows, they’re sort of, well, glamorised you know and maybe American law is like that, I don’t know, but Australian [law] certainly isn’t, and I notice the Australian legal shows as well aren’t as glamorised or the ones I’ve seen aren’t. ... I think its’ just because we’re in Australia, it seems more in line with our culture, the way people speak, how things are done, like for example ... in American shows they talk about beyond a shadow of a doubt which to my understanding is legal fiction, I’ve never heard that on an Australian legal show.⁴⁷

To this student, if there is reality to be shown on television then it is only to be found on Australian dramas. This is because of an assumption that glamorisation of the law is equivalent to fiction and therefore is unreality. The student argues that Australian productions do not include such falsity, and it is in line with our culture⁴⁸ to be less glamorous and impliedly more realistic.⁴⁹ Interestingly, this student makes this evaluation based on a strong misinterpretation of the law presented – in both US and

⁴⁶ FG 1, Alex, 40.

⁴⁷ FG 3, Mike, 10.

⁴⁸ It is unclear what the student means by the comment ‘more in line with our culture, the way people speak, how things are done’. I have interpreted that the example of the shadow of doubt concept is meant to elaborate on the argument that the less glamorised Australian productions are more realistic because they do not such falsities.

⁴⁹ Williams might have referred to this as the ‘structure of feeling’ of a culture that is familiar to the students. That is, the way Australian dramas look and the speech matters within it have conventions of a type of realism that is seen as ‘more’ real. See further Raymond Williams, *The Long Revolution* (1961).

Australian criminal law, the test is not ‘beyond a shadow of a doubt’ but ‘beyond reasonable doubt’, and is well utilised by television script-writers (in both jurisdictions) as a foreground for the conflict and tension inherent in an adversarial battle. It is not therefore something that is ignored by Australian legal dramas on the grounds of realism. Despite this, it is on the basis of the misinterpretation that the students are led to argue that Australian dramas are more realistic.

While students reject the ‘unreality’ of US productions, Chapter 6 has shown that they nevertheless referentially deploy its various elements in their local meanings and practices.⁵⁰ For this reason it is important to explore the specific and contingent processes of transformation that occur at the level of consumption. In essence, this is the specific goal of this thesis. Within such a context then, the last part of this section develops the notion of competing discursive constructions within the first year law students’ transformative process.

D Use of Discursive Resources to Make These Assessments

As this section of the chapter is brought to a close, it is important to reflect upon the discursive resources students will draw upon to make comparisons between fiction and a constructed reality. The argument has been made in the previous sections that students firmly reject any claims to verisimilitude within legal dramas and in so doing, are constructing for themselves a picture of the reality they want to inhabit as future lawyers. Yet what are the discursive resources that they utilise to make sense of, construct and interpret this ‘reality’? Students often revealed that they use a combination of television narratives, information from lawyer friends or family, and their class learning to come to conclusions about what real lawyering will involve. Take this next interaction as an example:

⁵⁰ Barker describes this as ‘localising the global’ and refers to Miller’s study of a Trinidadian audience’s engagement with US soap *The Young and the Restless*: Barker, above n 24, 208 referring to D Miller, ‘The Consumption of Soap Opera: *The Young and the Restless* and Mass Consumption in Trinidad’ in R Allen (ed), *To Be Continued.: Soap Opera Around the World* (1995)

Jenny: ... now I know a lot more about it I can look at what they're doing and say 'oh okay that doesn't happen as much as I thought it did', so say ... fighting battles in court. I know that it's mostly just paperwork in offices and conveyancing and stuff like that, and as well as my friend, this year he got a job in a law firm as a secretary so I also know through him that it's not the case and it's a lot more boring ... a lot more paperwork ...

And so you know this through your friend?

Jenny: And through watching shows, [and] like in class as well, like taking that class knowledge, watching shows and saying 'that doesn't really happen'.⁵¹

That students are gathering and evaluating various sources of information about life working in the legal profession can also be seen in the next comment from a student as she expresses cynicism about the reality of the personal characteristics and abilities of television lawyers:

I understand that ... television is like a stage for the actors themselves and the roles that they play are staged, like ... this was brought up on *The Panel* last night and they were talking about legal dramas – you can't imagine ... any barristers that go into court being so confident ...⁵²

While acknowledging the performative aspects of fictional television, this student uses intertextuality to evaluate reality. *The Panel*, a weekly Australian discussion show in which a panel of commentators critique and evaluate current events, is another television construction that became one source of her doubts about the mimesis of television lawyering. Again it would seem that students are using television productions (of various kinds) to mark the boundaries of reality.

Interestingly, because critical statements about the portrayal of reality (like those where paperwork and conveyancing are seen as the antithesis to all that is exciting and unreal about television dramas) were so commonly made in the groups, the students were often asked to clarify the basis for their evaluations. One student answered that it was part of 'getting older and more experienced, and just learning stuff' that contributed to 'perception changes' about the reality that is portrayed on

⁵¹ FG 2, 9.

⁵² FG 4, Emily, 11.

television.⁵³ Another group spends time trying to articulate how they go about assessing reality:

But how do you know what's real though?

Megan: Good point.

Alex: ... 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 onto other television shows and know that television's not exactly true.

Megan: 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.⁵⁴

In this discussion, Megan and Alex reflect on their process of interpreting reality in the face of fictional representations. Alex argues that 'common sense' is used to determine that television must be overdramatised. As he draws from his own experiences (not legal) to assume that hospital dramas are exaggerated, he assumes that so must the law. In likening the overdramatising of the law to the unreality of Bruce Willis saving the world in *Armageddon*, Megan reveals that as seasoned viewers (of film and television) they have 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 discursive resources students draw upon in order to make sense of competing notions of lawyering. In other words, if students have a critical ability to evaluate television representations and make conclusions about reality, then what are the sources for this ability? In the dialogue above Alex refers to 'common sense' and experiences from 'other fields' as alternative sources of knowledge about the world that are used to

⁵³ FG 2, Jenny, 18.

⁵⁴ FG 1, 29. By way of explanation Alex's use of the phrase 'to cark it' is Australian slang for 'to die'.

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 earlier⁵⁵ has indicated that personal experiences with lawyers, having family members or friends who are lawyers, or having discussions at law school, are all helpful sources to them in forming opinions about what lawyers are like and what they do. For students then, combining these sources to critique the representations of ‘reality’ on television involves the playing off of one construction or discourse over another. Of course this is what we all do. Without an unmediated direct access to reality that is not already an interpretation, what else could we do? As a result we draw on a whole range of cultural competencies and experiences, in order to critically decide between competing discourses. In this same way, the students are utilising the critical ability of questioning reality to evaluate television representations and identify what they believe to be the ‘true picture’ of lawyering.

III THEMES AND MESSAGING

Students also exhibited substantial critical ability in their discernment of themes inherent within the program narratives. This section of the chapter therefore explores the various themes students identified and critiqued. It first highlights how the students evaluate the world of law as being divided into two extremes, and argues that as a result they search for a ‘happy medium’. The section then delves into a discussion of student perceptions of judicial discretion as portrayed on television and how this impacts their conception of justice. Lastly, the section reports how students address issues of stereotyping within television production, particularly along the lines of gender.

A Extremes of Lawyering and the Search for the Happy Medium

One particular theme that seemed to be identified in all group discussions was that of the dichotomous legal world. In their discussions, students identify what Abel has

⁵⁵ See Chapter 2 Section IID.

termed the two ‘hemispheres’ of legal practice⁵⁶ – two completely different worlds defined by the nature of its practitioners. That is, in the first hemisphere lawyers generally practice in large firms and represent wealthy individuals or big institutions or companies;⁵⁷ but in the second hemisphere lawyers ‘make their living by representing individuals or small businesses without much wealth’.⁵⁸ Although the students will use different descriptions for each extreme, they all argue that television represents lawyers as divided into these two spheres. Yet students take the notion of hemispheres even further to incorporate personalities and motivation. So in the first hemisphere or extreme students identified the portrayal of those lawyers who are economically driven, morally inept, but competent and successful; and in 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. 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 rather than to make money so you get both extremes but you don’t seem to ... get a happy medium.⁵⁹

Again, it is evident that the students are constructing their version of reality by what is left undefined by television representations. Although it has been discussed in the previous chapter⁶⁰ that 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 lawyers do not inhabit the space of ‘the happy medium’. Students can not seem to identify a middle ground in the types of lawyers presented on television:

⁵⁶ Richard L Abel, *American Lawyers* (1989).

⁵⁷ See further Michael Asimow and Shannon Mader, *Popular Culture: A Course Book* (2004) 61, where it is argued that movie characters also fit this dichotomy.

⁵⁸ Ibid.

⁵⁹ FG 1, Alex, 10–11.

⁶⁰ See Chapter 6 Sections II and III.

Again, the thing is there's two different like strands, mostly they're really confident, ... 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 ...⁶¹

By critically evaluating the dichotomous representation on the television screen, and acknowledging the producer's role in portraying this message, 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.

Yet we might ask where this commitment to finding a balance actually comes from. It might be argued that it is simply a reflection of a cultural norm that the middle ground is somehow 'better' or 'truer' (although the students do not justify why this would be the case). Perhaps it is more than that, however. Perhaps it is driven by a strong investment in fantasy. That is, in seeking happiness and fulfilment in their careers students deploy critique in order to create a desired fantasy of the role they will adopt in the future. Take this next interaction as an example:

Megan: ... I suppose the lawyer that you're most likely to be like is that sort of a happy medium between the two extremes. Perhaps people who do go out there and do earn a lot but not ruthlessly and without any consideration for people.

Alex: ... the two extremes happen when you've got you know, either your hard-nosed or your person who's just totally in love with the law and wants to help people, and so that's their only concern, and so they just work you know work effectively free of charge; and I think that the majority of lawyers aren't either of them, they're more of a combination of the two.⁶²

If we stop for a moment to ponder this description of the happy medium, it becomes important to ask what a combination of elements from each extreme would actually look like. Presumably it would include the dedication and commitment of those that are 'hard-nosed' and elements of care, concern and a willingness to engage in *pro*

⁶¹ FG 1, Tom, 12.

⁶² FG 1, 17.

bono work of some kind. But how does this work practically and on what is it based? It is difficult to imagine a ‘hard-nosed’ but caring lawyer, keen for money and yet willing to work free of charge, and the students do not provide evidence for their assumption that this is what the majority of lawyers will be. Of telling significance here is Megan’s use of the word ‘perhaps’, which, in addition to reflecting a dual deployment of referential and critical analysis, indicates that ‘the happy medium’ is almost a fantasy – the dream that she would like to be true or achievable. The middle ground presumably is where the students believe they will find happiness.⁶³ In this way, both students are using their critique of television representations to construct a picture of the lawyers they imagine themselves to be. At a later point in the group discussion both students respond to a specific question about how they picture themselves as future lawyers by referencing again these two extremes:

Megan: Something a little bit more practical, you know, doing enough to make sure that you are *financially secure* and, but *also pro bono* and these other things that can *satisfy your human needs* ...

Alex: I think ... a combination of *Judging Amy*, you know *with money* because like she’s there and *she’s actually doing something practical* with the law ...⁶⁴

Reinforcing the argument made in Chapter 6, these students show their cultural desires for happiness and balance in their professional careers. With a particular reference to the character of Amy in *Judging Amy*, Alex builds on Megan’s comments that a balance of wealth and practical care is essential to the happy medium position they want to adopt.⁶⁵ That students are searching for this balance is also articulated by another group who describe the dichotomy of extremes in different terms:

Molly: [Television lawyers show that] you will become cynical, that you will become hardened and sick of dealing with other people’s miseries ...

⁶³ This strong desire for the future careers was discussed in Chapter 6 Section IIB.

⁶⁴ FG 1, 30–31.

⁶⁵ In the same focus group, one student identified *Seachange* (an older Australian drama produced by the ABC) as one representation where it is possible to pinpoint an example of the middle ground: ‘And then you have stuff like *Seachange* and it’s like the lawyers there are just normal community people that get up and argue every now and then, they’re normal’: FG 1, Ava, 11. Although interestingly this is the only student to reference an example from television of an identified happy medium.

Karen: Or you'll be foolishly idealistic and poor.⁶⁶

The students are critically aware that television drama thrives on the presentation of dichotomies. They argue that in legal dramas a common theme is the incarnation of one of the competing values of cynicism and idealism within a portrayal of lawyers. This is further seen in a later discussion within this same group:

Emily: I think the number one thing that ... I was just thinking about it then, it comes out in the law shows, is ... a clear division between being cynical or being idealistic ... Like there doesn't seem to be the representation of I don't know the person that's you know ...

Helen: Bit of each?

Emily: Middle of the road like the medium, like it's kind of like the profession is going to screw you up completely, and make you a hard-core bitch or you're going to remain forever like optimistic.

Helen: But that's just the characterisation making it interesting, if everyone was just medium mundane and had the same sort of ideas then it wouldn't be interesting to watch.

Emily: I think that you need a bit of both ... you have to be a little bit cynical and you have to be a little bit idealistic ...⁶⁷

Emily articulates her interpretation quite starkly. Thinking through this issue as the group discusses, she appears to be searching for a position that she can realistically adopt, and as a result (re)presents the only alternatives available as impossible extremes – 'hard-core bitch' or 'forever optimist'.⁶⁸ Helen argues that the presentation of such a dichotomy is a mechanism of television production in order to secure audience interest; Emily maintains her position that a balance between the two extremes is necessary. This extract provides a fascinating example of the encapsulation of student identity construction and critical development: as they articulate it, so they construct identity. That is, Emily is using a critique of theme presentation in legal dramas to construct an idea of what is required of lawyers working in the legal system.

⁶⁶ FG 4, 8.

⁶⁷ FG 4, 19.

⁶⁸ See further implications of this comment in the discussion about gender stereotyping in Section IIIC below.

1 *The Legal Aid phenomenon*

Prominent among many of the focus group discussions was the students' interpretation that the legal world was divided into the two spheres of the 'corporate' lawyer and the 'legal aid' lawyer. That is, they often described the presentation of the extremes by referring to the contrasting images of corporate law and legal aid. Take for example this comment:

I like *The Guardian* because like it shows you both sides of the law, it's got the high flying corporate lawyers and it's just got like the *normal* legal aid sort of people so it sort of shows both worlds.⁶⁹

Here, Alex uses the word 'normal' to describe those lawyers who work in legal aid, and who are juxtaposed against those in corporate law. As described in Chapter 6, students see the practice of corporate law as inexorably connected with unethical aspects of lawyering and here it is used to polarise that which is normal. Working within Legal Aid is in opposition to the immorality of corporate law and is therefore seen as 'normal'. We might note how this student affirms the portrayal of the two sides of law, as if law was only possessed of two aspects. Seeing the law in such black and white terms, with no middle ground (or other sides), is crucial to the student's interpretation of the dichotomy presented on television. This next exchange shows the transformation of their interpretation:

Alex: [In] *The Guardian* ... the guy who leads the legal aid department [Alvin Masterson] like he's just this kind compassionate person ... he just like he has no qualms about money, like that doesn't concern him, he's in the law for the sake of the law and I think that's admirable.

...

Joanne: Yeah because his motivation for getting into law is different to the corporate high-fliers.

Alex: He's not there to make money, he's there to help people.⁷⁰

⁶⁹ FG 1, Alex, 3.

⁷⁰ FG 1, 15–16.

The students interpret legal aid lawyers to be kind and compassionate⁷¹ and they see this epitomised in *The Guardian*. It has already been amply argued that they see it as admirable to practise law for the sake of altruism, rather than money, but the key point here is the attribution of this altruism to the extreme of legal aid. Corporate lawyers are only motivated by money, and therefore are ineffectual to help people. It is the students themselves who interpret and perpetuate the notion that legal aid lawyers are to be seen in juxtaposition with corporate law. In the following comment, one student cites *The Guardian* as an example where the two extremes actually meet:

... whatever it is I don't know but just the fact that ... he's [Nick Fallin] doing something for the community, yet he's still got his hand in the corporate side of things so ... he's got both fields going.⁷²

The main character from *The Guardian*, Nick Fallin, presents a character that is liked by this student because he seems to balance community work with corporate law – that is, has somehow achieved that middle ground within such polarised extremes. Yet interestingly neither this student, nor any other, mentions or picks up on the fact that this character is forced to engage in community legal work by sanction of the court, and the show indeed trades on the difficulties he faces in traversing both fields. Nevertheless, students use the presentation of both corporate law and legal aid on television to interpret the theme of lawyering extremes and construct a picture of the ‘middle ground’ they intend to occupy within such a polarisation.

⁷¹ At the same time as being seen as compassionate, legal aid lawyers are also seen by the students as mostly incompetent or unable to give accurate representation because of the nature of their position. ‘...put together a brilliant speech like that [and] they’re going to be a lot more likely to get off than if you have a lawyer you know from legal aid that’s met you for about five minutes before you have to go into court. They’re never going to come up with anything like that, they don’t have much chance’: FG 1, Ava, 8. This was in response to a question directed at what television lawyers communicate about lawyers in general. A good lawyer is distinct from a legal aid lawyer who is never going to come up with brilliant speeches and arguments. There is an underlying assumption in this language that legal aid lawyers are not very competent, or at least do not have the time or capacity (due to the nature of the job) to be competent.

⁷² FG 1, Alex, 18.

B *Judicial Discretion/Ideas of Justice*

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 current understanding about this theme, the students critically evaluate issues of justice and discretion:

Alex: And 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 ...

Ava: 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.*

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

Ava: Yeah I know but I wish it did.⁷³

In this show, the students see the protagonist Judge Amy as being able to achieve altruistic goals by providing constructive resolutions to legal problems, and the students admire this because they see 'fairness' and justice being achieved. Interestingly, the students perceive what Judge Amy does to be making up her own 'justice' and punishments. This perhaps reflects their lack of understanding of judicial discretion and lower court functions but it is nevertheless an aspect of her position and role that they use to articulate their position on justice. They are using the

⁷³ FG 1, 19.

program 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 the continuation of the previous extract where they were encouraged to elaborate on the issue:

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

Alex: Oh because I mean its a whole foundation of precedent ... I mean if you had people just going around willy nilly going '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.

Ava: 'cause that power that she has could be given to anyone who wouldn't use it as well as she does.⁷⁴

When asked why Judge Amy-type decisions wouldn't happen in reality, Alex's response is to refer to precedent as a vague reason against abuse of discretion and he raises the point that wielding such power would lead to arbitrariness and unfairness. There is a confusion and contradiction here in their statements – they articulate *their* view of justice by identifying Judge 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.

Another aspect of the students' discussion of Judge Amy is how it indicates that they conceive of a justice where the judge is permitted to use her own conscience in decision-making:

⁷⁴ FG 1, 19.

I like in *Judging Amy* how she always ... decides stuff according not only to the you know rational common sense thing, but listens to her own conscience, like she actually sits and considers both sides really seriously and then just makes a decision which is usually fair in some way and you know usually everyone else will appreciate how fair it is ... ⁷⁵

Students do not yet comprehend the intricacies of judicial discretion and the factors a judge must take into account when interpreting and applying the law, yet they articulate what they perceive to be a fair administration of justice. In this case, Judge Amy is found to be the epitome of fairness because she listens to her own conscience in addition to applying rational common sense.⁷⁶ In some respects it might be true to argue that Judge Amy simply reflects cultural norms about justice with which the students agree,⁷⁷ yet because they articulate that they don't give credence to making decisions on the basis of law, the students show that the use of subjectivity in applying discretion is more important in the achievement of justice and fairness. One student articulates this notion in terms of her personal desires to work in a judicial capacity:

I just think that maybe ... more towards a magistrate judge sort of thing ... because then you also have the influence on, in a sense making law, you know ... developing the law and I think that would be very interesting – directing the law but to be able to do the right thing.⁷⁸

Here, Megan's aspirations are driven by a desire to 'direct' the law to do the right thing.⁷⁹ With a hint of the altruism discussed in Chapter 6, she reinforces the notion that judicial decision-making involves that element of subjective control – 'making', 'developing' and 'directing' the law. To be able to do this within judicial abilities is not only interesting, but also necessary for doing what is right. The following comment is further evidence that students pick up on the role of television in

⁷⁵ FG 1, Ava, 15.

⁷⁶ It is not only judges that students see as permitted to use conscience. One student articulated that a good lawyer is one who uses 'their own conscience to decide what they do rather than being motivated by money or a desire to win': FG 1, Ava, 20.

⁷⁷ That is, it is generally culturally accepted that some sort of 'universal justice' exists from which judges must draw in their decision-making over and above any application of the law.

⁷⁸ FG 1, Megan, 32.

⁷⁹ This would seem to comply with Webb's argument that 'many students arrive at law school ... motivated by a desire to do justice': D Webb, 'Ethics as a Compulsory Element of Qualifying Degrees: Some Modest Expectations' (2001) 4(2) *Legal Ethics* 109, 115.

presenting the message that judges and lawyers are active manipulators of law and its outcomes:

It seems like lawyers are in some way almost like, above the law, and shape the law and determine what is going to happen and ... so it's like *they've* determined what it is rather than some legal principle.⁸⁰

Dan notes that the lawyers on television seem to determine the law's application by manipulation rather than through the constraints of existing legal frameworks, and by questioning this representation he reveals what he regards as being the 'real' determinant of a legal outcome.

Using the example of judicial discretion in the administration of justice, it has been shown that first year law students utilise their critical analysis of legal themes presented on television to develop an understanding of what legal concepts such as justice should involve. The following discussion further highlights students' critical abilities through an exploration of messaging within television narratives.

C Stereotypical Messaging

The critical abilities of students also extend to ascribing the production of message in the program. At times they overtly attribute manipulative intent to the producers, and at others they evaluate the message itself to actively challenge the portrayals. In one discussion they referred to the stereotypical messaging employed by television producers to win audiences:

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

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

Megan: 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*

⁸⁰ FG 4, Dan, 11.

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.⁸¹

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 nobility and niceness and juxtaposed against the attributes of underhandedness, suavity, richness and ruthlessness. One might question whether the descriptor ‘real’ can only be equated with the ‘nice and noble’? Perhaps it is indicative of a continuation of the stereotyping by the students themselves. Indeed, one interesting tangential aspect to the students’ critique is that they do not seem to divorce themselves completely from the influence of such stereotypes.

As discussed in Chapter 6, students are extremely keen to manifest a professional legal identity that incorporates the stereotypical aspects of status and recognition, and even when trying to be critically analytical about the mimesis on television one student commented: ‘[Television] still has that element of glamour ... I know some really dowdy lawyers ... people you wouldn’t pick as being lawyers at all’.⁸² This is a telling comment. There is an attempt to substantiate the claim that television presents unrealistic glamorous lawyers by referencing everyday ‘real’ lawyers known to the student – but by elaborating that you wouldn’t identify these dowdy characters as lawyers, this student simply perpetuates the stereotype without realisation. Why isn’t it easy to pick a dowdy person as a lawyer? Who says lawyers have to be glamorous anyway? Clearly this student is unable to see that television stereotypes have indeed played a part in shaping her own expectations of the appearance of lawyers.

⁸¹ FG 1, 27–8.

⁸² FG 4, Emily, 25.

Of course, if the argument is accepted that students are manifesting multiple identities by virtue of their transitional status within law school culture,⁸³ then it would be expected that with minimal knowledge of what ‘real’ lawyering will involve, the students would exhibit some confusion about the extent and nature of the stereotyping on television. Take this next extract as an example:

Simone: I think TV programs just portray them as normal people, they’re not a different class people, they’re just ... or maybe it does ... I don’t know.

Jenny: It’s hard because a lot of shows kind of keep them so *above us* and so being successful and heroes and then some shows do show their personal life like *Ed* or *Ally McBeal* and they kind of show like a more clumsy side to them, like that they make mistakes in real life as well. But I think in general TV portrays them as being heroes and having the fast, hard life, lots of money and not much time and yeah, just the general stereotype of lawyers I think.⁸⁴

Simone and Jenny are not confident in their interpretation of the typical lawyer stereotype. On the one hand they see what Jenny classifies as the general stereotype: wealthy, busy, heroic and upper-class lawyers; yet on the other hand, in response to Simone’s confusion, Jenny acknowledges the presentation of more ‘human’ qualities in television lawyers: making mistakes and a clumsy personal life. In addition to exhibiting an uncertainty as to whether television does or does not portray lawyers as ‘normal’, these comments reveal a conflict in terms of how the students think about lawyering: can they base their expectations on such characters because they are shown to have personal lives, or on the basis that they aspire to the combined achievement of glamour and heroism?

In other discussions however, some students more clearly refer to the need for television producers to strategically distance their portrayals from the traditional stereotypes in favour of likeable lawyers that the public are going to enjoy watching:

Joanne: 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, because they’re in it for the money.

⁸³ See Chapter 3.

⁸⁴ FG 2, 17.

Who are 'they'?

Joanne: The television production.

Ava: Yeah, the TV producers are trying to give them the images of what the people want to watch, I mean so we're basically only seeing the stereotypes which we want to see, like if we didn't want to see it then we wouldn't watch it and we'd change the channel and the TV producers to make their money they try and give us what we expect or what we enjoy seeing or watching.

Alex: They don't present the truth – they present what we want to see.

Ava: Which probably reinforces the stereotypes.⁸⁵

In a somewhat repetitive and confusing manner, Ava purports to agree with Joanne that there is a connection with popular attitudes and television production. Giving the public what it wants to see is tricky. Does the public want to see likeable lawyers because in general they detest them, or do they enjoy having their stereotypical ideas confirmed? Seeing himself in this instance as part of the viewing public, Alex continues the argument that the television producers don't present the 'truth'. But what is the truth? As discussed earlier in this chapter, despite a strong propensity to critique the reality of television shows, the students still have great difficulty in establishing what is true for themselves. Nevertheless as this extract shows, the students do acknowledge the role of television in affecting public consciousness, including their own.

1 Gendered stereotyping

Part of this acknowledgement that television does have a role in perpetuating stereotypes is also evident in the way the students identify gender stereotyping. First, on a very simple level, some recognise that television over-represents the gender balance within the legal profession in favour of men. When asked how they would describe the lawyers on television, one woman commented that 'they're dressed in suits and they're tall, good looking *men...*'.⁸⁶ In the context of discussing what it means to be a lawyer, another group returned to a critique of the level of mimesis on television, specifically on this issue of gender (and race) representation on television:

⁸⁵ FG 1, 28–29.

⁸⁶ FG 1, Ava, 10.

- Megan: And the women rise so high – black and women judges you know.
- Tom: I was thinking of that before, like on TV ... you've got the whole range of people as lawyers which probably isn't representative of what it's really like.
- Megan: Yeah that's one thing that really interests me, I always assumed that I'd just be able to you know, proceed through the ranks as was accorded to me and I, doing that assignment last semester about the discrimination against women and how many women get out of the law early because they're just hitting against the wall, you know it was really interesting, they don't show that on TV.
- Katie: Well they've got a majority of women in *The Practice*, there's seven lawyers, four women and two black people.⁸⁷

Megan, armed with some legal statistical knowledge makes the argument in this extract that it is much more difficult for women not only to survive but to progress within the legal profession, and that this is not shown on television. She is using her personal understanding of the difficulties that women face with the legal profession to compare against and judge the numerous successful women on television. It is interesting to note briefly, that as one of only two men in the group, Tom is in sensitive agreement that although television portrays the legal profession as representative, this is probably not the reality.

On a more critical secondary level, the students also identify the typical portrayal of women lawyers as manifested in one of two types: emotional carers confined to family issues, or as hardened 'butch' types who have to prove themselves. Take this next extract for example:

Heather: I think television shows make out women to be the family lawyers because ... you know it's always the woman that does the family kind of issues and it's kind of like one of those gender stereotypes.

What is that stereotype?

Heather: I don't know um just that women deal with those kinds of issues better, like to be with families like I don't think it would work so much on television, having a guy looking after family issues – I'm not sure why that is.

Vicki: Maybe it's the emotional sort of ... women stereotype.

⁸⁷ FG 1, 35.

Donny: I think it's just the connection between [the] family and women just being like this sort of section, and the men going out and fighting the battles in the criminal courts. The women can look after their section, which is ... this family sort of home based thing, so keeping them in the home, and the men can go out and fight the battles in another way. That's what I think anyway.

Heather: Well not quite keeping them in the home but yeah ... there's this stereotype of women being emotional and like I don't know, more in tune with family issues and whatever.

Amanda: ... you know that *Law and Order* one, they've got a female prosecutor and she's hard, she's hard as, like she doesn't, she doesn't care whether you're a good mother or you're a victim or whatever.

Heather: Well maybe that's the reverse stereotype then, women that do become lawyers are like really butch and I don't know ...

Donny: Yeah I see it sometimes it's like the women lawyers are out there cos they've got something to prove, they've got this like chip on their shoulder that they're women and they think they've got to fight this big battle against the male dominated, well what is probably male dominated profession, so they've got to go out there and fight really hard to try and get on top.⁸⁸

This lengthy discussion is quite fascinating. At times it shows a reasonable degree of critique regarding the nature of gender stereotyping and yet at other times the students seem to simply reinforce the implications outlined by the gendered representations. Consider the first two comments from Heather as an example. In the first she argues that television utilises a natural convention of connecting women and families to typecast women as family lawyers; but then, when asked to further explain the stereotype she has identified, Heather affirms the use of such a stereotype by arguing that it wouldn't work to have male family lawyers on television. It is Heather's uncertainty about this comment that sparks further critique of the stereotype whereby women lawyers are portrayed as more in tune with the family and therefore keeping their work closely connected with the home.

Interestingly it is the male participant of the group, Donny, who elaborates more specifically on the nature of this gendered stereotype. But it is difficult to tell in his first comment whether he is simply describing what he sees as the nature of the

⁸⁸ FG 6, 8.

stereotype as portrayed, or whether he actually views the role of men and women within specific legal contexts as demarcated in this way. It is my argument that he is describing the construction of the stereotype itself because it follows naturally as a reference to Vicki's classification of the 'women stereotype'. Heather's corrective response however would indicate that she perhaps saw Donny's comment as reflecting his own stereotyping. As a result of his shift from the connection between family and women to the clichéd 'keeping them in the home' stereotype, Heather seems offended and driven to clarify his explanation. Of course these women lawyers aren't literally in the home – they are working in law firms – and so Heather clarifies that it is more that women are kept to family law. The slippage in what Donny says seems to further provoke Heather to argue that television does not present women lawyers as anything but a stereotype.

When Amanda further argues that *Law & Order* presents a contradicting stereotype of the emotionally hardened woman lawyer, Heather classifies this as the 'reverse stereotype'. However, this tough woman lawyer identified by Amanda works as a prosecutor and therefore is outside the family/home sphere that has been previously argued as the typical stereotype. To Heather, this is just one more way of perpetuating the common discourse about women in business (including law) as either emotionally hardened or restricted to the domain of family law. Donny, in his second comment on this issue, makes a pragmatic argument for why women are typecast in this way. He seems to argue that by virtue of their gender women must fight hard to find prominence within a male-dominated profession. Of particular note here is Donny's description of the difficult position for women as producing a 'chip on their shoulder'. Although probably raised by Donny somewhat innocently, and indeed not challenged by any of the female members of the group, such a reference has negative connotations, and could indicate that he is limited in his ability to see beyond the stereotypes mainstreamed on television.⁸⁹

⁸⁹ Again with Donny's comment it is hard to pinpoint his perspective. An alternative argument here (giving Donny more credit than I have above) is that he is continuing to develop his critical abilities by discussing how and why the stereotypes on television are actually constructed.

Yet this is not a difficulty unique to Donny. Only a few minutes later in the same discussion of stereotyping, Amanda referentially argues: ‘... but like television programs portray lawyers as one type of person and it’s just, it looks weird seeing a woman being that type of person ... like that guy in *The Guardian*, he’s so mean’.⁹⁰ Amanda is relating the stereotype to her own perception of what women lawyers in reality *should* be like – that is, they should not be seen as mean or ‘ruthless’.⁹¹ This harks back to her earlier comment above about the presentation of women prosecutors on *Law & Order*. To her, while it is credible to see a tough or emotionless lawyer when he’s male, it is not acceptable to view women assuming such a role.

But this is not necessarily the view of Simone who argued that to be portrayed as emotional rather than ruthless has negative effects:

[In] *North Square* ... sometimes the women seemed weak because one of the main women ... she was often portrayed as crying ... and breaking down which I thought was interesting. But the guys in it were always, like they never backed down or anything, they were always really strong.⁹²

At another point in the discussion, Simone also expresses a subconscious recognition that critiquing gender representation itself constitutes a gendered response:

One of the ladies, I think they must have done it purposely because the ladies are seen, god I sound like a male, the women are seen as a lot more soft touch you know they’re more ... in touch with their human[ity] like, I’m not even making sense.⁹³

It is interesting that Simone presents an intuitive response to her own description of the gender stereotypes – she imagines herself saying what men might say – but expresses her difficulty in clearly articulating what typifies this ‘soft touch’ approach to female characterisation. Despite her self-confessed confusion, Simone hits on a

⁹⁰ FG 6, 9.

⁹¹ FG 6, 9.

⁹² FG 2, Simone, 5. *North Square* was a ten-part British drama series produced by Channel 4 about a group of barristers, and it aired in Australia in 2002 on the ABC.

⁹³ FG 2, Simone, 10.

recurring aspect to the students' critique of the way women are presented on television. She makes the point that television producers intend to show women lawyers in a particular light. Comments from across all the groups indicate that students identify two possible characterisations for women to assume: the emotionally responsive family or community lawyer,⁹⁴ and the tough, ruthless lawyer who is forced to adopt an emotionless position in order to survive in the male-dominated profession. It is important to note that this is intimately connected to their evaluation of the extremes of lawyering as discussed earlier. The students' discussions of the elusive 'middle ground' echo this dichotomy of 'hard core bitch' versus emotional and optimistic family lawyer. It is argued that (at least for the women) these students are defining their future roles *both* in relation to gender *and* in relation to idealism.

As the above examples show however, even though through their gendered identification they attempt to actively challenge the level of stereotyping on television, their discourse at times reflects some difficulty in actually moving beyond them. 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.

IV THE ROLE OF PRAGMATISM IN A TRANSFORMATION OF SELF

As part of their developing critical abilities, students in first year law also exhibited a substantial capacity for pragmatic criticism. This is an awareness in the viewer of the 'ways in which the structure of the program captures and occupies their imagination'.⁹⁵ Law students seem to be especially open to this ability. This is primarily because they are 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. This section seeks to

⁹⁴ In these circumstances they often refer to *Judging Amy* and *Philly* for examples of women who are characterised by their dual role of parent and lawyer, as well as by their emotional response to the law as applied to various characters: for example, FG 1, 28.

⁹⁵ Liebes and Katz, above n 2, 216.

outline the students' deployment of pragmatism when viewing legal dramas and to describe how this deployment is used toward a transformation of self.

Students frequently make reference to the uses they make of watching television dramas. They comment on how they use the legal shows to inform themselves about 'legal issues that are out there',⁹⁶ 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. Watching the US shows in particular, they acknowledge that it makes them question the consistency with Australian law and makes them evaluate the law in relation to what they would perceive to be a 'real-life' legal situation:

Ava: Well it teaches you about some legal issues which are out there and what would happen if you did this and what kind of you know, I don't know, what kind of processes you go through, I don't know, and sometimes you just watch American shows and go ... wait, isn't there a law against that?⁹⁷

Emily: See I take away a lot of information that goes in there, like I wonder if it would work in our legal system. I actually watch it as a means of comparative law like say, ... like I've only started doing it now I'm doing law ... cos they're all American shows.⁹⁸

By comparing the various legal issues as presented in American shows with what little knowledge of Australian law they are now developing, the students are actively using the television narratives as part of their legal education. They are using them to connect to their life as if television was just one of their lessons in law. As a further example see this next exchange:

Alex: I just think that in the last six to eight months also my perspective of lawyers has changed since I've started studying law ... and you start to understand more what it is ...

Megan: And you also start to realise just how I suppose restrictive it is you know, in the shows ... there's always ... the loophole that they have, there's always some way to get around it [the law], and you come here and you see wall, wall, wall ...

...

⁹⁶ FG 1, Ava, 3.

⁹⁷ FG 1, 3.

⁹⁸ FG 4, 7.

- Ava: ... 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.
- Alex: 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 ...
- Ava: 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.
- Tom: ... now its part of the learning.⁹⁹

Students utilise the television shows to test their understanding, to feel good about their learning and increased knowledge, and to critically evaluate the law presented. In addition, Megan explains that their viewing now also enables them to reflect on the efficacy of the law they are learning in class – to her the legal dramas provide opportunities to ruminate on the rigidity that law imposes on its application. In this discussion, the students excitedly describe the enjoyment and intellectual stimulation they receive from the active process of watching legal dramas. As first year law students, they particularly enjoy legal dramas because it is within the process of watching that they are able to occupy a space of special knowledge and actively take part in what they view as their legal education.¹⁰⁰

Using television as an educative tool for exploring how the law might operate in practice is indeed important for some students. Emily commented, 'I like seeing the transition from how the law operates with the police to the ... court room and whether or not some of the mechanisms of the law that the police use ... actually are legal methods'.¹⁰¹ In contrast, however, other students dismiss the legal relevance of the shows in favour of watching for the express purpose of developing their own personal legal identity:

It seems for most of us that we don't actually watch it for the actual legal aspect so we're not following the cases or trying to pick out the bits of law that are applicable, it's just characterisations of lawyers I think. I myself ... just sort of think when I actually am a lawyer

⁹⁹ FG 1, 38–40.

¹⁰⁰ Note how Tom argues that critical evaluation of the law as presented on television is now part of their learning.

¹⁰¹ FG 4, 2.

am I going to do that sort of thing or you know like how, how close will life be to what these shows are?¹⁰²

In this declaration, Molly takes it upon herself to comment on behalf of her fellow classmates. Rather than watching for the sake of the law (as others have indicated that they do), it is her argument that law students generally watch in order to evaluate how they will actually behave as future lawyers. In this way, Molly is describing her active use of television narratives as a referent to her future career. At a later point in the group discussion, Molly further articulates her need to develop a legal identity that is separate from that which is presented on television:

The fact that they are all in it for the money, which I find incredibly irritating, because that's translated into my life, so like when people have said 'oh you're doing law' you know one of the topics that comes up is the money, and I always just have to go 'well look at me, do I look as though money is important to me' ... it's just the first thing that everyone thinks of is ... and that irritates me.¹⁰³

This was in response to a question about what television tells the public about lawyers, and Molly expresses clear frustration at being instantly typecast by non-lawyers because of the image that is portrayed in relation to a lawyer's high income. Because she is aware of the dramatic function of characterisations and the exaggerated portrayal of a lawyer's life, Molly is prompted by other people's perceptions to construct her own professional legal identity that is not defined by television or the general public.

Molly is not alone in her desire to use television to construct legal identity. Many students articulate their use of these narratives to positively reinforce the stories they are telling each other about what becoming a lawyer will mean. It is through this construction and retelling of stories that legal identity is being crafted and a transformation of self is kickstarted. As the students make comments about the behaviour of television lawyers, they are disclosing the very nature of the transformative process they are undergoing:

¹⁰² FG 4, Molly, 3.

¹⁰³ FG 4, Molly, 25.

I never really thought about whether [legal dramas] influenced me or not until I actually did law. I didn't really think about law as law – I thought about it as just another job. ... [Now] I've found that I'm watching it more and analysing what they do more, so I'm finding it's been influencing me a lot ... But now that I'm watching it I can see that they're pretty unrealistic ...¹⁰⁴

To Jenny, her involvement with law school has prompted her to critically examine the way that law is presented on television, and to challenge her own perceptions about the way it is practised. In the next account, Dave presents a self-reflective story of how studying law enabled an unmasking of television's romanticised versions of reality:

I had this remote romanticised ... idea of what a lawyer would do and then I came here [law school] and I found out that they don't do all this sort of stuff – which is fine by me, I don't mind – but obviously I had a different idea of what lawyers were before I came here and learnt the *real world*.¹⁰⁵

This is such an interesting disclosure – it would appear that law school has the effect of debunking any mythical impressions of the law that students initially possess. Yet despite Dave's apparent enlightenment, what is the 'real world' that he has learned in comparison to the stories on television? To him, the real world is law school, and it is in this statement that we can see encapsulated the unique position of the first year law student.

As an active member of the audience in both the narrative realms of law and popular culture, first year law students exhibit fervour in developing pragmatic criticism – they are ripe for transformation because they are seeking knowledge about the law from various sources and are ready and willing to challenge perceptions. Their eagerness and willingness to transform and construct legal professional identity is evident in their excitement when talking about their future careers as seen on television. Megan says that television 'makes it sound like what we're going to be

¹⁰⁴ FG 2, Jenny, 8.

¹⁰⁵ FG 5, Dave, 14.

doing is really exciting’,¹⁰⁶ and Tara argues that watching television as a law student is ‘sort of like a reward ... and I know that it’s not real, but ... maybe one day I’ll just get a little bit of that somehow, some way’.¹⁰⁷ In the same group, Jess also argues that watching *Law & Order* puts an ‘exciting edge’ to studying law because she is learning how to interpret and apply the law just like the lawyers on her favourite show.¹⁰⁸ In these comments, there is an implicit recognition that television has implications for both the cognitive and affective parts of their selves. Jess reveals in her comments that watching television contributes to her construction of legal identity:

I’m sitting there [in class] going ‘I know this is boring and I know this probably is what my life is going to be like, but ...’ I just can’t get out of it ... like you go home and you watch *Law & Order* and you think ‘yeah I’m one of them’, [when] really you’ve sat in class all day you know talking about contracts.¹⁰⁹

This description of her transforming perceptions underscores the transitional position of the first year law student. Even though she has an expectation that her life is likely to involve the same boring tasks that she is now completing as a student (researching and reading cases), she acknowledges that her understanding of what a lawyer transforms as she watches *Law & Order*. This transformation enables her, not only to identify with the television lawyers but also to derive from them a sense of belonging – that is, to imagine that she is already a lawyer herself.

It is argued that first year law students utilise television legal narratives as one source in their transformation and construction of professional legal identity. And although these are the same students who, as stated earlier in the chapter, often criticise the portrayals for their lack of authenticity, the key point is not that they are actually learning law (whether real or otherwise) from television but that they are learning to evaluate and critique legal issues and all forms of legal texts or narratives. They openly acknowledge that they use television for learning skills of critique, evaluation

¹⁰⁶ FG 1, 3.

¹⁰⁷ FG 7, 24.

¹⁰⁸ FG 7, 4.

¹⁰⁹ FG 7, Jess, 20.

and argumentation, and their discourse reveals that they are actively experiencing and reflecting on their process of transformation as it is occurring.

V CONCLUSION

This chapter began by exploring the way students use television narratives to construct reality. It was argued that by questioning the degree of verisimilitude of legal television, students are weaving together the notion that reality is the exact opposite of television. In critiquing the various themes and messages as described in the second section of the chapter, students continue to tell stories of the dichotomies they perceive: criminal law versus conveyancing; brilliant orations versus sheer incompetence; high quality argumentation versus disorganisation; and courtroom dramatics versus menial research tasks. To the students it is the first part of each dichotomy that as presented on television forms the basis for their desires and fantasies – leaving the second parts to be used to construct what must be ‘reality’. Of course, this is in part derived from the primary discursive resource within which they currently participate – law school – and so in the final section of the chapter I returned to the notion of their transformative use of such a resource to define their ‘reality’. Students are using television as a means of comparison and definition and they connect this to their process of identity construction. Having illustrated in this part how students use television narratives to create their own stories, the next part explores how legal education can respond to such a transformative process.

PART III

IMPLICATIONS AND CONCLUSIONS

Law school is an initiation, a rite of passage, and like a rite of passage in any indigenous culture, it is a powerful and potentially transformative experience. Having passed through the ritual rites of passage, the initiate stands in the same shoes as before, but now sees the world differently. ... Something happens to law students that significantly alters their sense of themselves and their experience of the world, a transformation that social scientists fail to understand.¹

The major premise of this thesis is that law students in their first year are indeed undergoing a substantial transformation. Part II has described how these students, as members and active participants of both cultures of law and popular media, utilise television legal narratives as one resource upon which to construct legal identity and an ethical position. Having analysed and interpreted the students' talk, this final part seeks to draw out some of the implications emerging from their discourse. Chapter 8 first turns a spotlight on the way in which students are constructing identity and feeling their way through ethical dilemmas via storytelling. Chapter 9 then explores how legal education should respond to and nurture the students' developing critical reflection and ethical awareness as they undergo transformation.

¹ James R Elkins, 'Becoming a Lawyer: The Transformation of Self During Legal Education' (1983) 66 *Soundings* 450.

CHAPTER 8

STUDENTS FUMBLING TOWARDS IDENTITY CONSTRUCTION: IMPLICATIONS FOR ETHICAL DEVELOPMENT

I INTRODUCTION

In Chapter 6 it was argued that students use polarised images of lawyers to identify with what they perceive to be positive aspects of lawyering. They clearly make a distinction between good and bad lawyers, and disassociate themselves from any suggestion of allegiance with the latter category. On numerous occasions, the students were shown to be extremely keen to create for themselves an ethical position on which to base their legal identities, and yet they had not articulated a systematic framework or philosophical basis for creating this position. As argued in Chapter 6, the students are developing a legal identity by recognising that to be a lawyer requires ethical considerations, and yet they lack clarity in assessing what is in and of itself an ethical issue. Of course, this is not to say that they lack ethical values, or that there isn't an ethical position implicit within what they say and do. Individuals spend a lifetime sorting through ethical views that are constantly being challenged and modified. Students should not be expected to come to law school already aware of how they will meet the particular responsibilities, obligations and obstacles that they will face as lawyers.

Despite this, the analysis described in earlier chapters also shows that the transformative process of first year law causes them to be very receptive to ethical talk.¹ They are keen to decipher the actions of television lawyers as ethical or

¹ The term 'ethics talk' is frequently used by Elkins in his analysis of legal education and legal ethics, and refers to the notion of listening, conversing and corporately thinking about any issue of an ethical nature. See, for example, James R Elkins, 'Lawyer Ethics: A Pedagogical Mosaic' (2000) 14 *Notre*

otherwise, and equally eager to imagine how they would react in similar circumstances. There is a place for legal education to add fuel to this fire, encouraging students to become more aware and reflective of their personal ethics through which they can effectively make various decisions within legal practice. As Richards has observed:

Professional education, which educates the most powerful class of people in our society, receives these people at a crucial age in which, in response to the circumstances of professional education, they will or will not develop better capacities for ethical reasoning concomitant with their professional identity. I do not see how we can justifiably deny our active responsibility for results we so palpably shape.²

Very few would challenge the notion that encouraging ethical awareness within law students, as attendant with their developing legal identity, is a worthwhile endeavour of legal education. Indeed it has been argued that the public and educators alike share a concern about ‘the graduation of cold, seemingly uncaring practitioners who appear to operate in a void of humanistic values and out of self-interest and opportunism’.³ Yet often the response of law faculties or clinical programs is to address primarily the aspect of professional responsibility as expressed within the criteria of various codes and regulations.⁴ That is, apart from teaching legal ethics as part of professional conduct requirements, legal education does not prioritise the ethical development of its law students, nor does it foster the interaction of students with ‘wider questions of

Dame Journal of Law, Ethics & Public Policy 117; James R Elkins, 'The Reconstruction of Legal Ethics as Ethics (Review Essay)' (1986) 36 *Journal of Legal Education* 274.

² David A J Richards, 'Moral Theory, The Development Psychology of Ethical Autonomy and Professionalism' (1981) 31 *Journal of Legal Education* 359, 374.

³ G M Dickinson, 'Moral Development Theory and Clinical Legal Education: The Development of Professional Identity' (1984) 22 *University of Western Ontario Law Review* 183, 184.

⁴ For example at Wollongong University the subject ‘Lawyers and the Australian Society’ seeks to raise legal ethics issues in relation to a lawyer’s compliance with the criteria and regulations set out in various state and commonwealth legislation, including, for example, the *Legal Profession Act 1987* (NSW). Although this subject does pose to students some theoretical and philosophical questions about ethical issues, this is not its priority or main objective. In terms of other institutions, a recent AUTC Report states that ‘while all but two law schools include ethics in the LLB curriculum, there is no clear pattern’: Richard Johnstone and Sumitra Vignaendra, 'Learning Outcomes and Curriculum Development in Law ' (A report commissioned by the Australian Universities Teaching Committee (AUTC), 2003) 122. The report also found that there is no consensus as to the level of ethics to be taught – that is, whether it should cover professional responsibility or something broader: at 121. See further discussion in Chapter 9.

human moral reasoning and conduct’.⁵ This chapter therefore first defines ethics as constitutive of identity, and as a basis upon which to articulate and justify ethical decision-making, and contrasts this with an understanding of morality that recognises the cultural marking out of moral discourses. Within such a context and upon the base of the analysis in Chapter 6, the chapter then argues that first year law students are participating in an ongoing process of ethical development that is intimately connected with identity construction. The chapter posits that students should be encouraged to be self-reflective about their ethical and identity construction, and it concludes by commenting on how the students’ use of stories reflects the allied nature of ethics and identity.⁶

II THE NEED FOR ‘INSIDE VALUES’: ENCOURAGING ETHICAL AWARENESS AMONG STUDENTS

As reported in Chapter 6, one of the students, Tara, commented that in order to respond effectively to human problems, the practice of lawyering requires some measure of ‘inside values’.⁷ But what did she mean by this? It was a comment made within the context of discussing what they believed was admirable about television lawyers, and as a group they agreed that being a lawyer must necessarily involve a basic interest in humanity (for example helping their ‘fellow people’). Tara’s comment reflects an understanding that inside values is something more than simply interpreting and applying the law. In essence, she is implying the need for some kind of internalised sense of ethics – but again, what is this?

Over time, within legal discourse, terms like ethics, morality, values and professionalism have lost clarity in their definition and are far too often used

⁵ Dickinson, above n 3, 184. Castles also argues that unless legal ethics is taught with a coherent philosophical basis, students are unlikely to understand legal ethics as anything more than a gloss on the substantive law: Margaret Castles, ‘Challenges to the Academy: Reflections on the Teaching of Legal Ethics in Australia’ (2001) 12(1 & 2) *Legal Education Review* 82.

⁶ Chapter 9 will then continue with a discussion of these implications for legal education – specifically, how meeting the needs of student ethical development can be addressed within and throughout the law school.

⁷ FG 7, Tara, 10. First referenced in Chapter 6 Section IVA. Within the context of the surrounding discussion, she is clearly referring to the internal or personal values as distinct from any professional or external community values.

synonymously. There is no clear consensus on when each should be used over and above the others. Indeed in everyday usage ethics and morality are frequently used to refer to the same thing. ‘We might say that so-and-so has no ethics or no morality [or no ‘inside values’], in which case we probably mean that the person in question does not appear to have moral standards or values.’⁸ As it is the aim of this chapter to argue that it is beneficial for law students to develop an understanding and appreciation of their own ethical stance, it is important at this juncture to provide some context for the use of terms like ethics and morality within legal education and legal practice. This section first provides definitional clarity over key terms such as ethics and morality. It secondly moves to a contextualisation of legal ethics within the framework of these definitions. Thirdly, it illustrates how students are developing awareness of their own ethical reasoning.

A Ethics v Morality

Traditionally seen as the study of morality, the word ‘ethics’ derives from the Greek word *èthos*, referring to both ‘custom’ and ‘character’.⁹ ‘To conform to the customs and character of the community meant that you were acting ethically.’¹⁰ Often these two derivations have formed the basis for a dualistic approach to the term ethics whereby explanations of morality are either described as ‘ethics of duty’ or ‘ethics of virtue’. In the first account, ethics of duty, the focus is on morally evaluated actions, with a particular concern to locate the action or types of actions that people have an obligation to do or to avoid doing. That is, to discover those actions that form binding moral duties.¹¹ In Foucauldian terms, this is what actually lies at the heart of ‘morality’. That is to Foucault, morality is interested in those moral discourses that

⁸ Michael Hill, *The How and Why of Love: An Introduction to Evangelical Ethics* (2002) 21.

⁹ Aristotle refers to *èthos* meaning character and *ethos* meaning custom as different aspects of the same root *eth-*. The adjective of *ethos* (*èthikos*) is from where our term *ethics* is derived: Aristotle, *Ethics* (1976) 90-1.

¹⁰ Ysaiah Ross, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (3rd ed, 2001) 9.

¹¹ Hill, above n 8, 23. The ethics of duty approach is often criticised for either its ‘Kantian emphasis upon ethics as the articulation of universally applicable moral principles’ or its ‘consequentialist emphasis on ethics as a calculation of the effects of actions (of which various forms of utilitarianism are most common)’: Timothy L Hall, ‘Moral Character, the Practice of Law, and Legal Education’ (1990) 60 *Mississippi Law Journal* 511, 516 footnote 18.

are concerned with prohibition, and culturally sanctioned rules.¹² In this sense, morality is not of the individual, but of the culture.

In contrast, the focus of the second account, ethics of virtue, ‘is not the detached actions of people but the moral agent who performs the actions’.¹³ That is, an ethics of virtue account is based on a human’s moral experience of character, or identity. It is not about *doing*, but about *being*, and a person’s character (rather than action) is the object of analysis. In this second account ethics therefore regards identity as the ‘basis of human existence and the manner in which the formation of the self takes place’, shaping the nature and content of the self.¹⁴ It is in this account that, consistent with the argument presented in this thesis, ethics is seen as constitutive of identity. That is, to deploy Foucault again, ethics is crucial to the construction of the self and is concerned with how individuals negotiate the rules of morality (or moral discourse) in order to arrive at personal ethically sound judgments.¹⁵

Although often seen as rivals, it is appropriate to argue that these two accounts are intricately linked within culture. It is hard to believe that a conception of morality could only be concerned with the rules and outward acts – you cannot have the *doing* without the *being*. To deny their complementary status does not allow for the individual’s ethical development,¹⁶ nor does it acknowledge that ethical negotiations as part of identity construction naturally occur within the boundaries marked out by various discourses. Yet it is useful for the purposes of this chapter, and indeed this thesis, to highlight the distinction between morality and ethics along the lines of this twin conception. That is, it should be understood that when referring to ethics in this thesis I am actually pointing to that which gives rise to identity – that is, the process through which it is possible for individuals to construct their selves as they negotiate within the more rigid and collectively based moral discourse or ‘morality’.

¹² Michel Foucault, *The Care of the Self: The History of Sexuality Vol 3* (1986). See also Chris Barker, *Cultural Studies: Theory and Practice* (2000) 239.

¹³ Hill, above n 8, 23.

¹⁴ Ibid 38.

¹⁵ Foucault, above n 12, see also Barker, above n 12, 239. Ethics is seen by Foucault as crucial to the construction of subjectivity (that which presents identity as the product of discourses and institutional practices): see further Geoff Danaher, Tony Schirato and Jen Webb, *Understanding Foucault* (2000).

¹⁶ Hill, above n 8, 35.

The key emphasis is that ethics are seen as cultural and not universal or metaphysical. Ethical judgments are therefore sourced from cultural warrants and norms such that individuals can justify ethical decisions within the context of community. Seen as ethical naturalism, this argument recognises that individuals exist in relationship with others in community and that rather than complying with a universal benchmark of ethics, individuals must provide justifications for their actions within the bounds of culture. Such a theory of ethics thus differs from moral relativism ‘which implies that no rational agreement on ethical principles can be reached’.¹⁷ Focusing on the idea of community, the ethics espoused here emphasise that ‘individual identities and mutual interests are situated or embedded within the institutions or social groups’ to which they belong.¹⁸ This chapter explores how law students use the resources of the wider community context to make ethical judgments as part of their evolving subjectivity. It is argued that developing ethical judgment is constitutive of identity and therefore a necessary priority within legal education and practice, which both operate amid the wider moral discourses of culture.

B Contextualising Legal Ethics

In the context of looking to ethics to provide an explanation of people’s interaction with community-based moral discourses, an understanding of ‘legal ethics’ should encompass the philosophical, cultural and moral underpinnings of both the law’s daily operation and the legal practitioner’s decision-making and judgment. And yet legal ethics is traditionally treated as synonymous with professional rules of conduct regulating the practice of law. Often also coined as the ‘law of lawyering’,¹⁹ legal ethics is most commonly seen as only encompassing a discourse of obligations and is therefore distinguished from the field of ethics defined above. It is treated within

¹⁷ Lorie M Graham, 'Aristotle's Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Legal Education' (1995/1996) 20 *The Journal of the Legal Profession* 5, 9.

¹⁸ Julian Webb, 'Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education' (1998) 25 *Journal of Law and Society* 134, 142. This is also reminiscent of Aristotle’s approach to ethics, which views human beings as ‘inherently social’ and treats ethical judgment and conduct as a social construct. See further Aristotle, above n 9.

¹⁹ Elkins, above n 1 (2000), 197.

legal education as a body of enforceable mandates no different from the law of contract or tort,²⁰ and arguably ‘reflects the traditional separation between law and morality that is part of the ruling legal positivist paradigm within which the legal academy and profession have operated’.²¹ Evans makes the point that in Australia, as in other parts of the world, we may as well recognise that the notion of legal or professional ethics has been limited to a prescriptive set of rules of conduct that govern the behaviour of lawyers.²² Indeed, this is a view identified by the Australian Law Reform Commission,²³ and supports the argument that within legal education, the ethical behaviour of lawyers should be connected with the ethics of the wider culture. Part of the failing of legal ethics within teaching practices has been not attending to ‘the relationship of past and future upon the moment of ethical decision’ and thus severing ‘ethical acts from the ground in which they grow’.²⁴

Viewing legal ethics in this vein thus only addresses the duty aspect of an ethical account, and it does not allow for an understanding or developing of lawyer identity within ethical discourse. Law should be seen as inextricably tied to ordinary ethical reasoning, with the professional work of lawyers equally recognised as saturated by ethical concerns.²⁵ It is important to recognise that it is the character and integrity of the self that allows for professional stability, identity construction, and effective decision-making:

²⁰ James E Moliterno, 'Experience and Legal Ethics Teaching' (2001) 12(1 & 2) *Legal Education Review* 3, 4.

²¹ Diana Henriss-Anderssen, 'Teaching Legal Ethics to First Year Law Students' (2002) 13 *Legal Education Review* 45, 46. Further, one might argue that professionalism itself could be seen as a mechanism of control – that is, bodies who patrol the boundaries of conduct and therefore disinterested in an individual's ethical stance – but this is the subject of another thesis.

²² Adrian Evans, 'Lawyers' Perceptions of Their Values: an Empirical Assessment of Monash University Law Graduates in Law 1980-1998' (2001) 12(1 & 2) *Legal Education Review* 209, 225. On this basis, whenever discussing the application of these rules within legal practice, I will be using the term ‘professional legal ethics’.

²³ This view was expounded in their evaluation of academic legal education within the context of reviewing the adversarial system of litigation: Australian Law Reform Commission, 'Rethinking Legal Education and Training' (ALRC Issues Paper 21, Australian Government, 1997). '[E]ducation in legal ethics tends to focus narrowly on the rules which govern legal practitioners' conduct': at 8.18.

²⁴ Hall, above n 11, 514.

²⁵ Jane B Baron and Richards K Greenstein, 'Constructing the Field of Professional Responsibility' (2001) 15 *Notre Dame Journal of Law, Ethics and Public Policy* 37, 40.

Character is the basic expression of the orientation of life that gives unity and principle to the self as an agent of action. ... It is made up of a person's fundamental values, commitments and beliefs. These values, commitments and beliefs grant an understanding of the world from a particular perspective and this particular perspective helps the individual to interpret actions [and behaviour].²⁶

Thus if professional conduct was instead seen as 'the end product of a continuum' beginning with an understanding of moral discourses and manifesting itself in a 'manner of behaving' through construction of ethical identity, then perhaps a better working definition of legal ethics could be developed.²⁷ In this thesis I argue for a definition where the compliance with professional rules of behaviour is understood as also encompassing the much broader values that underlie being a lawyer, including professional and personal values.²⁸ Within this deeper definition, scope is therefore given for individual lawyers to be attentive to the development of their own ethical judgment.²⁹

In the context of understanding 'ethics' as the study and analysis of how individuals negotiate morality and construct identity, personal ethics is conceived of as providing the opportunity to be attentive to one's individual sense of judgment and decision-making. In this chapter and the next, when I refer to the need to encourage or help students to develop their personal ethics, I am specifically referring to the development of ethical awareness through which students can have an articulated justification for their ethical choices. Such awareness is not to be seen however as a fixed pro forma which, once an individual has worked out their particular value system, can be applied successfully to any ethical dilemma. Rather, it is meant to be viewed as the broad basis upon which an individual can begin to understand, articulate and justify their ethical decisions. By attending to ethics as constitutive of

²⁶ Hill, above n 8, 38.

²⁷ Castles, above n 5.

²⁸ Henriss-Anderssen argues that this incorporates ethics at both a macro and micro level – that is, it involves an understanding of values that underpin the legal system, as well as those values that form the basis for personal evaluation and decision-making: Henriss-Anderssen, above n 21, 47. See also Chapter 9 where I argue that this understanding of legal ethics is necessary to be included within legal educative strategies.

²⁹ Henriss-Anderssen, above n 21, 47.

identity, it is acknowledged that ethical judgment does not spring into existence from the mere contemplation of rules, but rather, it is a matter of becoming.³⁰ As Aristotle observes, ‘we become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts’.³¹ Viewing legal ethics in this vein requires an attention to ‘not so much the isolated moments of moral decision and action, as it [should] to the cumulative effect of many such moments’.³² In this way, legal ethics must be seen as attending to the issue of identity construction and must concern lawyers as persons rather than solely focused on rules and procedures.

C Ethical Awareness and First Year Law Students

Having argued that students are in need of personal ethics, it is important to recognise that a student upon entering law school, is ‘not entering a seminary or political organization. Although anticipating exposure to new ideas and views, he or she does not agree to take on any new system of values’.³³ A central aspect of university life is the access that students have to a multiplicity of views, and it is certainly not the role of the university lecturer to inculcate any one set of values in their students.³⁴ On this basis, it is of vital importance to make possible the enhancement of student capacity for self-determination, rather than seeking to ‘mould their personal or political views in any particular way’.³⁵ Requiring students to develop ethical awareness is not about ensuring they implement the ‘right’ values or morals, but is instead an opportunity to provide a basis for effective and appropriate personal and professional decision-making, enabling them to develop and evaluate their values and attitudes in a self-reflective manner.

Although we could say that it is possible that everyone has a sense of morality, ‘it is certainly not true that everyone has given explicit thought to seeing that the moral

³⁰ Hall, above n 11, 515-7.

³¹ Aristotle, above n 9, 1103b.

³² Hall, above n 11, 517.

³³ D Webb, ‘Ethics as a Compulsory Element of Qualifying Degrees: Some Modest Expectations’ (2001) 4(2) *Legal Ethics* 109, 111.

³⁴ *Ibid.*

³⁵ *Ibid.*

standards and rules they operate on are consistent or justifiable³⁶ – that is, it cannot be said that everyone has a self-reflexive³⁷ understanding of their ethics. To argue it another way, people can have moral positions or beliefs without ever having analysed how they fit together or how they will be applied in any given situation. This is a synthetic knowledge of ethics without the accompanying analytic knowledge:

People might have an intuitive apprehension of how their morals fit together, without being able to explicitly state how. What is more, people can operate quite adequately without this analytic knowledge until they are faced with a conflict of values or until their morality is challenged ... We must have an ethic as well as a morality.³⁸

So, we can operate within a culturally sanctioned and constituted morality without personal ethical awareness. But this can leave us confused when we are faced with moral dilemmas and have no basis from which to make decisions. This is exactly where first year law students are positioned. While it is clear that they are evaluating the decisions and actions of television lawyers based on personal standards of morality, the students do not yet have an articulated justification for their choices – that is, personal ethics from which to justify their decisions.

This was most evident in Chapter 6 where the students made ethical assessments about defence lawyering without any justified basis for their assessment. As discussed in that chapter, the students' use of evocative language to describe what they perceived as 'bad' television lawyering indicated the passing of moral judgment. Operating from within community bounded norms, students consistently connected the representation of guilty clients (especially murderers) with those lawyers who were unethical – both from the perspective of an ethics of duty (compliance within a moral discourse) and an ethics of virtue (a reference to character). Although students

³⁶ Hill, above n 8, 21.

³⁷ Reflexivity here refers to the way we reflect on information from our social context and incorporate it into our knowledge of the world in our subsequent actions. See generally Anthony Giddens, *Modernity and Self-Identity* (1991). This is further discussed later in the chapter – see n 63 and accompanying text.

³⁸ Hill, above n 8, 21–2.

did not recognise the distinction between these two aspects,³⁹ they would interchangeably refer to elements of unethical practice and unethical character. Take for example the following quote that was utilised in Chapter 6 to highlight the students' placement of moral evaluation on a lawyer's tasks:

Jess: Yeah you never see lawyers on television being like sly or underhanded.

Rob: And if they are, they're the bad lawyers like they're ...

Jess: Yeah.

Rob: Representing a murderer or something, ... or the big corporation.

...

Tara: And you go I'd never be like that.⁴⁰

Together these students are describing 'bad' lawyers, and although they seem to be in agreement about what such a description entails, there is a distinction between the examples given by Jess and Rob. While Jess attributes elements of deceit and therefore professionally unethical practices, Rob argues that bad lawyers also make ethically reprehensible decisions by representing murderers (and corporations!). In this way, one could argue that Jess is making a comment about the rejection of culturally sanctioned rules in contradistinction to Rob's more specific evaluation of character, and how it reflects standards of personal ethics.⁴¹ While students on the one hand are clearly trying to distinguish between good and bad legal practice, they are at the same time inadvertently expressing the tension that exists between understanding their personal ethics and applying it within a professional legal context that is bounded by community morality. The students' talk reveals that their concern, as Foucault would describe it, is to 'focus attention on themselves' and use ethics as a mode of self-production – that is, as an active construction of identity.⁴² Indeed, students' comments reflect the very nature of an identity project – that is, that their understanding of their own personal ethics is an ongoing work in progress. By acknowledging that ethical stances are completely culture-bound and therefore justifiable through culturally sanctioned criteria, it is argued that the students'

³⁹ And why would they, if they have never been taught how to differentiate them?

⁴⁰ FG 7, 13. First referenced in Chapter 6 Section IVA.

⁴¹ Of course, Jess also makes a comment on character by her use of the adjective 'sly', but it is argued that she uses it more to relate to a culturally sanctioned judgment about deceitful lawyering practices.

⁴² Foucault, above n 12.

developing ethical reasoning is closely linked with their burgeoning legal identity. The next section of the chapter thus emphasises this connection through an exploration of storytelling.

III LINKING IDENTITY AND DEVELOPING ETHICAL JUDGMENT THROUGH STORY-TELLING

As discussed in Chapters 3 and 4, the analysis of the students' talk in this thesis is based on the notion that 'identities are discursive constructions instantiated in the flow of language'.⁴³ Students use legal narratives on fictional television as one resource for talking through their moral positions. It is through their talk about television lawyers and the various ethical approaches these characters employ that students illustrate the deep connections between personal ethics and self-identity.⁴⁴ That is, to study ethics is to take part in examining the way we know and experience ourselves, and the focus of this thesis is to show that through their storytelling students exhibit the close relationship between ethics and identity.⁴⁵ The purpose of this section is to explore these connections through an additional look at some of the issues raised in Chapter 6. More specifically, we have seen in Chapter 6 that law students are making sense of the world of lawyering through fictional portrayals of ethical dilemmas. Their investment in legal identity begins with their articulated desires for the skills and lifestyle they see as commensurate with a career in law, and continues with their stark commitment to altruism. In painting a picture of the 'good' lawyer who only protects the innocent and transgresses for all the right reasons, the students move unknowingly towards a blurring of the boundaries between law and morality and, in the process, reveal the intimate connection between their personal ethics and the process of developing legal identity. This section therefore begins with an exploration of the ways in which students connect their future identities with

⁴³ Chris Barker, "'Cindy's a Slut': Moral Identities and Moral Responsibility in the "Soap Talk" of British Asian girls' (1998) 32(1) *Sociology* 65, 66.

⁴⁴ In his research of the moral discourse produced by British-Asian girls in relation to soap operas, Barker concludes that the ethics of 'relationships is crucial in the identity formation of young people': *ibid* 79.

⁴⁵ Elkins, above n 1 (1986); Thomas L Schaffer, *American Legal Ethics: Text, Readings, and Discussion Topics* (1985) xxi.

notions of ‘good’ lawyering, and concludes with a discussion about the importance of understanding an individual response to ethical and legal identity.

*A The Search for the ‘Good Lawyer’: How Does Ethical Judgment
Contribute to an Investment in Legal Identity?*

The concept of identity as discussed in Chapter 3, is seen as a cultural construct that is ‘continually being produced within the vectors of similarity and difference’.⁴⁶ Rather than being seen as something fixed to be discovered, identity is a process of becoming.⁴⁷ In this way, the analysis has shown that as the students speak it, so they become invested in their legal identity.

Identity gives us an idea of who we are and of how we relate to others and to the world in which we live. Identity marks the ways in which we are the same as others who share that position, and the ways in which we are different from those who do not. Often, identity is most clearly defined by difference, that is by what it is not. Identities may be marked by polarization, for example in the most extreme forms of national or ethnic conflict, and by the marking of inclusion or exclusion – insiders and outsiders, ‘us’ and ‘them’. Identities are frequently constructed in terms of oppositions such as man/woman, black/white, straight/gay, healthy/unhealthy, normal/deviant.⁴⁸

To this list of binary oppositions we can easily add ‘lawyer/non-lawyer’. Students in this research, by their very own admission, position themselves in opposition to the non-lawyer, in the way they discuss the status and lifestyle that should be accorded to a legal practitioner.⁴⁹ Not only this, but in the way they describe their aspirations towards certain skills and abilities usually possessed by effective lawyers, these novice students show that ‘[s]ameness and difference are marked both symbolically through representational systems and socially through the inclusion or exclusion of certain groups of people’.⁵⁰ In the context of legal identity, the students encourage

⁴⁶ Barker, above n 43, 66. See also S Hall (ed), *Representation: Cultural Representations and Signifying Practices* (1997).

⁴⁷ See Chapter 3 Section IV.

⁴⁸ Kathryn Woodward (ed), *Identity and Difference* (1997) 1–2.

⁴⁹ See Chapter 6.

⁵⁰ Woodward (ed), above n 48, 1–2, 4.

social exclusion by affirming those ‘representational systems’ that are purely legal in nature – that is, the appearance, bodily practices, language and characteristics in which a legal identity may be ‘enacted, negotiated or subverted’.⁵¹

More pertinent to the context of this discussion, however, is the way in which many students utilise polarisation to mark legal identities in terms of ethics. That is, as this thesis has shown, they view and imagine the practice of lawyering in an ethically polarised way – you either defend the guilty (and are immoral) or you represent or prosecute on behalf of the innocent (and are a ‘good’ lawyer with morality intact).⁵² By making arguments and comments about the ethical stance exhibited by television lawyers, the students are marking out and investing in their identities. They are displaying the very process of identity construction that is taking place as they articulate their position on what it means to be a ‘good’ lawyer. But what do they mean by the ‘good lawyer’?

It would seem that students are very keen to create for themselves an ethical position on which to base their future legal identities, even despite not having an individual awareness of what would help them make effective ethical decisions. Let us recall the discussion in Chapter 6 of the comments from one particular student, Dan, who quite fervently articulated a desire towards maintaining social justice:

... one of the things that TV has directly influenced me in [was] ... I’d be very interested in prosecution because that way I can kind of decide whether I’d prosecute someone, you know and or not to, you know if it was obvious that they were, they were innocent then you could let them go you know or you wouldn’t push it or whatever, but you would, you would if it was if it seemed on the face of it that they were obviously guilty. ... Whereas in defence you know you’d have to take any, any scumbag that came along so to speak.⁵³

⁵¹ Ibid 1–2, 5. It is worth noting here that the culture of law school (as I describe it in Chapter 3) and the discourses that surround it perhaps encourage the students to take this particular stance.

⁵² See Chapter 6.

⁵³ FG 4, Dan, 28. First referenced in Chapter 6 Section IVA.

By evaluating the actions of fictional characters on television legal dramas, Dan is beginning to assemble for himself the professional legal identity he will assume. In reversing the discretionary roles generally accredited to defence lawyers and prosecutors when ‘choosing’ clients, Dan reflects not only a lack of understanding about these roles in practice but also his adoption of a polarised ethical identity that seeks to ensure the protection of the innocent.⁵⁴

Interestingly, it would appear that seeing themselves as the ‘good’ lawyer’ is a practice not confined to first year law students. Pike has argued that ‘virtually every lawyer wants to feel that he is not only a good lawyer (in the sense of technical proficiency) but that he is a lawyer of impeccable integrity. He not only wishes this to be his public image, he wishes to think this of himself’.⁵⁵ It has been further argued that because they occupy a special role within society, lawyers have a need to ‘see their work as being socially significant, as contributing, in some way, small or large, to the public good’.⁵⁶ As Giddens argues, personal integrity is the ‘achievement of an authentic self’ and ‘comes from integrating life experiences within the narrative of self-development’.⁵⁷ This claim to integrity and goodness forms part of ethical connection between self-development and the students’ trajectory for their hoped-for futures, and is further evident in the students’ overall attribution of ethical judgment shown to be manifested in the language they used to compare good and bad lawyers. In discussing the qualities of a ‘good’ lawyer, they used the second person pronoun ‘you’ to associate themselves with positive ethical examples of lawyering, in contrast with their reference to ‘bad’ lawyers, by a use of the third person pronoun ‘they’ which reflected their disassociation from anything that was unethical. Students articulated that they did not want to invest in a legal identity that would involve what they perceive to be bad ethical judgment or an immoral application of the law.⁵⁸ It is

⁵⁴ Indeed, through their subconscious use of language a consistent narrative for the students was that as future lawyers they are only interested in representing the innocent. See Chapter 6.

⁵⁵ James Pike, *Beyond the Law: The Religious and Ethical Meaning of the Lawyer's Vocation* (1963) 91 quoted in Elkins, above n 1 (1986), 282.

⁵⁶ Elkins, above n 1 (1986), 282. Elkins argues that these claims to goodness also double as rationalisations ‘that support a rather pervasive amorality and self-deception’ which is of crucial concern if legal ethics is to address more than compliance with a body of rules: at 283.

⁵⁷ Giddens, above n 37, 80.

⁵⁸ See Chapter 6 Section IV.

in making these identifications that students show the connection between developing ethical judgment and the marking of identity.

It would seem that first year law students, without the benefit of practical experience or study in legal and professional ethics, are constructing professional identities from a position where what is 'ethical' behaviour has not yet been evaluated, tested and delineated. Yet, as future lawyers, they are taking up a culturally bound position by clearly identifying that they want to 'make a difference' and uphold high ethical standards. They want to have a basis for effective decision-making – in essence, they want to attend to their personal ethics. Nevertheless, while students are picking up on the theme as presented in television fiction that ethical dilemmas are an everyday aspect of lawyering, their discussions reveal an extremely blurred understanding about morality and legal ethics. It is therefore important to recognise that they do use these fictional actions and behaviours, both virtuous and immoral, as a part of the process of *becoming* in their developing identity. Understanding their own ethical stance, or developing an awareness of their personal ethics, will enable students to facilitate and sustain self-identity.

B Self-identity – the Value of Recognising the Discursive Construction of Self

Referring to the way in which we 'construct unifying narratives of the self with which we emotionally identify', self-identity is viewed as a reflexive and discursive construction of self.⁵⁹ As a story of the self 'one's identity refers to points of temporary emotional attachment to the subject position which discursive practices construct for us'.⁶⁰ Following the anti-essentialist position adopted about identity

⁵⁹ Chris Barker, *The Sage Dictionary of Cultural Studies* (2004) 180.

⁶⁰ Ibid 181.

throughout this thesis, the concept of self-identity concerns a culturally contingent production that is specific to particular times and places.⁶¹

This cultural production specific to a study of law is discussed in Chapter 3, and shows that first year students are in a unique transitional position. Placed at the intersection of law, society and popular culture, these students have the opportunity to reflexively construct their personal ethics, which will inexorably contribute to a continuous biographical project of self-identity. In this sense, self-identity is constituted not by the possession of traits but rather as a reflexively sustained narrative of the self.⁶² Thus, although students identify specific characteristics to which they aspire, it is not the final attribution of these that will constitute students' self-identity. As students reflect on the embodiment and enactments of their personal ethics they must decide whether the rationalisations they make for their legal decision-making will fit with the kind of self-identity they envision for themselves. As these ethical deliberations are constitutive of their identity, it is important to recognise that reflexivity is an integral part of the self-identity project.

But what does it mean to be reflexive? Giddens argues that reflexivity involves a 'process whereby self-identity is constituted by the reflexive ordering of self-narratives'.⁶³ This means acknowledging that individuals have the capacity to reflexively understand themselves and construct coherent narratives that assist in the interpretation and understanding of the self.⁶⁴ Reflexivity is a continual monitoring of an individual's activities as a natural feature of being human and enables the constant revision of social activity in the light of new knowledge.⁶⁵ This means that reflexive law students would reflect on their own experiences, as well as those of television lawyers, and actively construct identity in light of those reflections.

⁶¹ 'This anti-essentialist position does not mean that we cannot speak of identity, rather it points us to the political nature of identity production and to the possibility of multiple and shifting identities': Barker, above n 43, 66.

⁶² See Giddens, above n 37, 53: 'Self-identity is not a distinctive trait, or even a collection of traits, possessed by the individual. It is the self as reflexively understood by the person in terms of her or his biography'.

⁶³ Ibid 244.

⁶⁴ Chris Barker, 'Television and the reflexive project of the self: soaps, teenage talk and hybrid identities' (1997) 48(4) *British Journal of Sociology* 611, 614; Giddens, above n 37.

⁶⁵ Giddens, above n 37, 35.

It is interesting to recall from Chapter 2 the results from the transnational study, which revealed that students across each of the six countries surveyed had quite low opinions of lawyers' honour and ethics.⁶⁶ In Australia particularly, although the students taking part in the survey thought that lawyers had plenty of prestige and deserved their incomes, they confusingly did not think that lawyers were possessed of much honour.⁶⁷ This strongly contrasts with the legal identity they are moving towards as evidenced in their discussions of television lawyers. Why would students pursue a profession that they believed consisted of so many unethical lawyers? Certainly the analysis of Chapter 6 show that students are not intending to be as dishonourable as the lawyers they perceive are currently in practice, and that they think they will make a difference.

It is argued that law students, at the commencement of their studies, are unaware or unsure of their personal ethics and have only begun the process of developing self-identity within the discourses of law. It is within this great transformative stage that students will experience a surge of understanding about their self-identity, thereby enabling them to be aware of their development trajectory from the past to the future.⁶⁸ For Giddens, self-identity involves the building up of a consistent feeling of biographical continuity through identity stories,⁶⁹ and so first year students build on what they experienced in the past, and draw from the experiences of the present, to form an identity project. As an important moment in the students' trajectory of their desired future as lawyers, first year law thus provides insight into the processes of student development and transformation as it is occurring.

The key argument is that the ongoing process of identity development is taking place whether the students are aware of it or not. They cannot help but participate in the continuing transformation. In recognising this process of discursive construction,

⁶⁶ Michael Asimow et al, 'Perceptions of Lawyers - a transnational study of student views on the image of law and lawyers' (2005) 12(3) *International Journal of the Legal Profession* 407. See also Chapter 2 Section IID.

⁶⁷ Asimow et al, above n 66.

⁶⁸ See Giddens, above n 37, 75.

⁶⁹ Barker, above n 59, 181.

legal educators can therefore place a high value on fostering student awareness of their developing personal ethics and identity projects. ‘The aim of all education, even in law school [sic!], is to encourage a process of continuous self-learning that involves the mind, spirit and body of the whole person.’⁷⁰ If legal education can engage its students in a reflexive focus on ethical approaches to lawyering, then it can positively contribute to the identity projects students are building in relation to a career in law.

IV COMPLETING THE TRIANGLE – LINKING STORIES WITH STUDENTS WITH ETHICS

Law students are in a position, if they could only realize it (and their teachers make it more obvious), to be more self-reflective and make these reflections part of their learning. Ethics talk allows us to explore conventional and commonplace views about lawyers, and to test these views against collective hopes and ideals, to test them against our imaginings and fears of what lies ahead.⁷¹

While Chapter 9 will deal with the approaches that legal education can take in relation to fostering an ethical identity in law students, it is important to mention here that in my research students have shown a complete willingness and eagerness to engage in ‘ethics talk’ – that is, the lawyer ethics imbued in conversation. As the analysis of Part II has shown, students utilise their discussions about television fiction to ‘explore act and consequence, self and other, work and play, good and bad, ordinary and special, appearance and reality’.⁷² If it is desirable for students to develop skills of awareness, reflexivity and ethical judgment, then it can be extremely valuable to make them familiar with stories and talk about ethics. It is important to provoke discussions about how to be self-aware, about what personal ethics involves, and about how this would beneficially contribute to their overall ability to make

⁷⁰ R. Cramton, 'The Ordinary Religion of the Law School Classroom' (1978) 29 *Journal of Legal Education* 247, 262. Quoted in Kim Economides and Julian Webb, 'Do Law Schools Care about Law Students and Legal Values?' (2000) 3(1) *Legal Ethics* 1, 9.

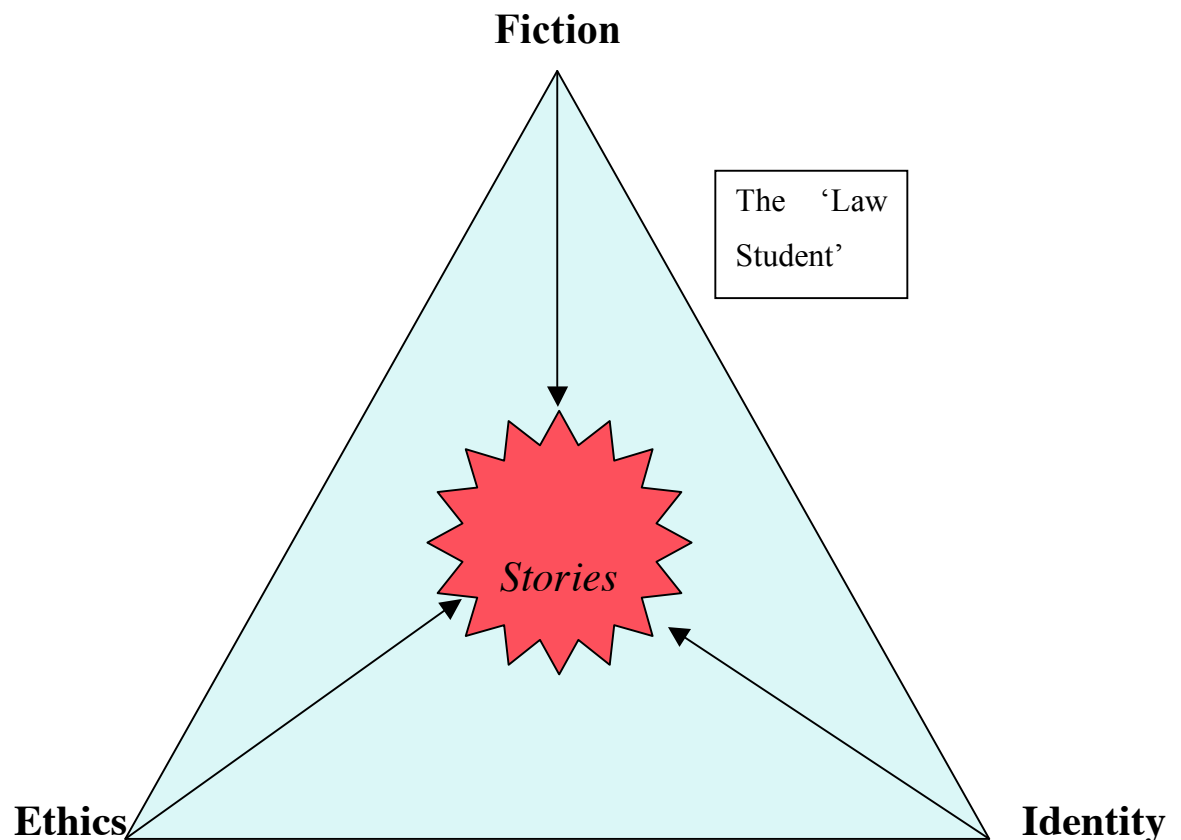
⁷¹ Elkins, above n 1 (2000), 125. ‘We create, in conversation, a social and qualitative ground for our professional work life. We might, I am arguing here, learn something about lawyer ethics from something quite simple, a sustained course of conversation’: at 124.

⁷² Ibid 124.

effective legal decisions. By talking about what it is they value, and ‘about how matters of value are shared and disputed in the world we inhabit with others’,⁷³ students can be pushed to evaluate, defend and sometimes reconstruct their self-identity in relation to the way they view the world of law.

The role of stories then, is crucial to the development of students’ ethical identity, and completes the triangle of exchange occurring through the interpretation and re(telling) of stories. That is, students have shown that there are substantial connections between their interpretation of popular legal stories, their ethical development and their identity construction. It may be helpful at this stage to modify the figure used in Chapter 2 to illustrate the unique placement of the first year law student.

Figure 8.1



⁷³ Ibid 127–9.

In Chapter 2 at Figure 2.1, the focal interest point of this figure was acknowledging the central placement of the law student within the cultural intersections of law, society and fiction. Here, the focus is on the ways in which ethics, identity and stories are triangularly connected through the law students' transformed understanding and (re)production of stories of law. It has already been established in this chapter that students are showing in their talk the connection between developing ethical judgment and the marking of identity. As a part of the process of *becoming* in their developing identity, students are formulating an awareness of their personal ethics, and it is this interaction that forms the base of the triangle in the figure above. The right side of the triangle was illustrated in Chapters 2 and 3 with the argument that, through the students' talk, there is a clear link between popular fiction and identity. That is, popular legal narratives on television are used by students to interpret and explore legal practices and behaviours, and they not only construct meaning about the law through these stories but they actively use them to construct identity. In the last pages of this chapter, it is important to complete the discussion of the triangular exchange by showing that stories have a further function in the development of personal ethical judgment (the left side of the triangle), and that ethics, identity and fiction are each constitutive of stories. Further than this, it is argued that within the law student, stories comprise a central link between ethics and identity.

By discussing and (re)telling the stories of popular culture, students are articulating their own process of ethical judgment and identity construction. That is, returning to the ideas of both Aristotle and Giddens, we develop a character, or identity, through a process of becoming. Ethics is concerned with the way in which individuals negotiate moral discourses and so there are ethical implications in the stories we tell each other about the law and our lives. We learn, argue and contest what is right and wrong through the construction of self-identity which 'as a coherent phenomenon, presumes a narrative'.⁷⁴ In this way, stories are essential to the transformative power of identity construction. In the context of this research then, while the television texts offer various moralities it is the students' stories that actually become the site for ethical

⁷⁴ Giddens, above n 37, 76.

development. The students' talk about the moral codes in television is an integral part of the formation of their ethics and identity.

'Stories do not prescribe behaviour; they do not lay down laws for us. Instead, they inscribe behaviour: they lay down ways of being in us.'⁷⁵ Students are thus utilising stories in two ways: to develop a sense of what it means to 'be' a lawyer through a deployment of television stories; and to articulate who they are and what they are becoming through the telling of their own stories. It is the combination of these two uses of stories that helps students to construct identity. That is, if the meaning they are transforming about law is said to be part of the *nomos*, then the articulation of students' stories about their ethical development is more than just an integral part of identity construction: it *is* identity in construction. Through stories, students are speaking to what they are doing when they study law, what path they are travelling on, and the bases from which they will justify legal and ethical decisions. This means, to highlight the triangular exchange, that the transformative journey of becoming a lawyer sets students on a path of story production and identity construction that will form the basis of ethical development and justifiable decision-making.

V CONCLUSION

A study of legal ethics should address the need of students to begin the process of thinking and responding, talking and imagining the practice of law and reflecting on the ethical dilemmas they might face. It is this process that will be a formative contribution to their development and deployment of ethical judgment or personal ethics. This chapter has argued that first year law students are indeed fumbling towards attending to their ethical judgment and are not yet fully aware of what this means for their professional lives. It has been further argued that there is a connection between the development of ethics and identity through the use of stories. On this basis it would appear that there is an urgent need for legal education to ignite and fuel the ethical imagination of future lawyers so that they will be prepared for behaving in

⁷⁵ Desmond Manderson, 'From Hunger to Love: Myths of the Source, Interpretation, and Constitution of Law in Children's Literature' (2003) 15(1) *Law and Literature* 87, 90.

legal practice in an ethically aware manner.⁷⁶ Thus it is argued that a ‘paradigm shift in legal education’ is essential:

... law schools need to embrace this issue. We legal educators cannot afford to concentrate on the rules – or even upon ethics – without also recognising what lies behind lawyers’ behavioural decisions.⁷⁷

Implicit in recognising both the discursive value of student talk and the transformative change occurring within law student identity is the notion that legal education should take the teaching of first year students very seriously. The next chapter urges that the development of students’ ethical judgment, critical abilities, and self-awareness become important aspects to address in the curriculum.

⁷⁶ Evans, above n 22, 229. Evans has quantitatively demonstrated that there is a need for major improvement in lawyers’ value awareness, and argues that law students are not graduating with a sense of moral responsibility: at 265.

⁷⁷ Ibid 265.

CHAPTER 9

CAPITALISING ON THE STUDENTS' TRANSFORMATIVE PROCESS: IMPLICATIONS FOR LEGAL EDUCATION

I INTRODUCTION

Having argued in the previous chapter that students need to be aware of their personal ethics in order to evaluate, defend and develop their self-identity in the process of becoming a lawyer, it is important to now consider how this might best be achieved within legal education. This thesis has consistently shown that law students, as viewers/readers, are constantly interpreting, transforming and producing meaning in relation to the images of law presented to them. They are utilising this process not only to make sense of the law, but also to analyse and critically reflect on their personal ideas and values in light of their understandings. They are then transforming these into projections (both professionally in the academic sense, and personally in the ethical sense) of the path that lies ahead. In this way, as argued in Chapter 3, first year law students are on a unique journey. However, legal education has largely been unable to capitalise on this transformative process. This chapter suggests that legal education could recognise the usefulness of stories as a catalyst to stimulate both law students' critical reflection and an awareness of personal ethics.¹ I aim to encourage legal pedagogy to appreciate the unique position of first year law students by harnessing their capacity and eagerness for critical and self-reflective analysis.

In Chapters 6 and 7, the inquiry into student discussions exposed both the distinct and subtle ways in which students individually approach and understand lawyering practices. That is, the focus was on evaluating the students' referential and critical uses of popular stories as revealed in the focus group discussions. Articulating their

¹ As in Chapter 8, I am using the term 'personal ethics' to refer to the development of ethical awareness through which one can have an articulated justification for ethical choices.

own personal expectations and aspirations in response to legal narratives, students revealed their significant participation in critical reflection and identity construction. I want to ask then, how best can we make use of this activity in the process of educating the lawyers of the future? This research has shown that students within their transformative journey are negotiating and interpreting a variety of narratives, identities and experiences to decipher the legal world into which they will be graduating.² It is therefore crucial for legal education to not only encourage, but also explicitly to prioritise the stimulation of critical and reflective awareness in law students.³ The students have shown that they are using stories as a form of self-reflection, and as a way of challenging their perspectives on the social world. Why not harness and explore these perspectives with the students as they actively deploy stories towards a developing awareness of identity construction?

This chapter therefore argues that legal education could better encourage students to actively experience self-awareness and identity construction within the larger legal community. Of particular interest is the role of ethics in the students' continuing narrative of self. That is, the chapter will explore the implications for legal education in acknowledging the students' deployment of ethical stories (both heard and (re)told) in their process of 'becoming'. Since the purpose of encouraging and harnessing critical reflection lies in helping students to be aware of their personal ethics, so the chapter first urges for the recognition that developing ethical judgment is an indispensable aspect of a student's transformative journey. In considering how developing a law student's ethical judgment can be more effectively incorporated into legal educative practices, the chapter next explores possibilities for promoting ethical talk within the law school culture. Lastly the chapter commends methods for capitalising on the process of student identity transformation as revealed in this research.

² Indeed, this is part of the natural process of human development.

³ This is of course not to argue that encouraging such abilities 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 chapter is that there are possibilities for dealing with students' development in a much more explicit and active manner within the curriculum and/or degree structure.

II ATTENDING TO ETHICAL AWARENESS

Webb argues that ‘requiring ethics as part of the legal education curriculum will not bring about a sea change to the realities of legal practice, but it will create an environment of ethical awareness which hitherto has not been present.’⁴ It is this awareness that is key to capitalising on the students’ transformative journey. Having an awareness of one’s personal ethics can generate sensitivity to the various ethical dilemmas that may arise in legal practice.⁵ ‘Thus lawyers in finding their personal ethics must continually assess and reassess their assumptions, values and beliefs.’⁶

As will be further discussed, teaching ethics within a legal context does not ‘change the environment in which law is practised, or the fact that students have diverse moral views’,⁷ but it does enable the encouragement and nourishment of students’ capacity for sensitivity and awareness. By giving students opportunities to explore, reflect on and be sensitive to the ethical issues they will face in legal practice, they will be equipped to develop strategies for recognising and confronting such issues when required. Within such a context, this section first describes the importance of encouraging ethical awareness and the role of narrative within that development. The section then moves to an exploration of the role of law schools in attending to ethical awareness and provides a foreground for the pedagogic suggestions that follow.

A The Importance of Ethical Awareness for Future Lawyers

Having shown in chapter 8 the link between students’ stories and developing awareness of ethics and identity, an emphasis is placed now on the pedagogic value of attending to these connections. From an educative point of view it is argued that

⁴ D Webb, ‘Ethics as a Compulsory Element of Qualifying Degrees: Some Modest Expectations’ (2001) 4(2) *Legal Ethics* 109, 113.

⁵ ‘An individual lawyer’s ethical values will result from both a practical and a spiritual approach to the relevant legal rules and the development of sensitivity to his or her own morals, those of clients, those of the opposition and those of the community’: Ysaiah Ross, *Ethics in Law: Lawyers’ Responsibility and Accountability in Australia* (3rd ed, 2001) 10.

⁶ *Ibid.*

⁷ Webb, above n 4, 113.

students 'need to be taught how to reflect critically on ethical dilemmas'.⁸ Of course, this does not mean that values can be taught or that they should be foisted upon students, but rather it is suggested that students could be taught how to become aware of their own decision-making processes and judgment. The justification for encouraging greater student awareness is thus predicated on the value of student perception and reflection. If the transformative journey of first year law students is to be taken seriously, ethical awareness must be understood as developing 'through experience, and grounded in our ability to deal not just rationally, but relationally with others'.⁹ Attending to ethical awareness would then be beneficial to students on two main grounds: (1) where professional rules are inadequate for effective decision-making; and (2) in order to set appropriate parameters for being attentive to ethically defensible decisions. The following discussion briefly outlines these justifications.

1 Inadequate Guidelines

There will always be times when professional guidelines offer little or no assistance in dealing with a particular situation. In order to prepare students effectively for the myriad of complex ethical circumstances they may encounter within legal practice, they will not only need to understand and know the relevant professional rules of conduct, but importantly they will need a firm ethical basis from which to apply them.

An exposure to ethics also requires students to be critical. While professional regulation provides an important guide for lawyers, it is inevitably incomplete. Lawyers will have to determine their own course of action where guidance is lacking, based on the values that they have elected to practise by. ... The rules may, in rare cases, require a course of action which is repugnant. This is the dilemma which lawyers dread. A lawyer who has an appreciation of ethics will not have a cure for such a dilemma, but will be equipped to deal with it openly and effectively.¹⁰

⁸ Lorie M Graham, 'Aristotle's Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Legal Education' (1995/1996) 20 *The Journal of the Legal Profession* 5, 8.

⁹ Julian Webb, 'Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education' (1998) 25 *Journal of Law and Society* 134, 144. Webb cites Aristotle for the basis of this perspective.

¹⁰ Webb, above n 4, 126.

There are many situations which arise within legal practice that are not specifically covered by professional rules and codes of conduct, and I have argued in chapter 8 that law is inextricably intertwined with ethics and moral discourse.¹¹ Ross argues that ‘to become both a good person and a good lawyer we cannot just adopt a legalist position and strictly follow the ethical rules and conventions of the profession’ because these rules allow a large degree of individual interpretation, and because there are many situations that they do not cover.¹² A resultant effect is that the lawyer is left scrambling either to resort to a personal ethical framework upon which they have not reflected or developed, or perhaps to retreat into a legalist position. By becoming ethically aware students thus develop a basis from which to make decisions in the face of insufficient rules.

2 Providing Justification of Choices

Ethical awareness will also enable students to translate moral discourses into ethical judgment and conduct, and to make the commitment necessary for moral competence. By becoming aware of ethics, they are learning about the moral dimension of the cultural world of law, and beginning to reflect on the various ethical issues associated with legal practice. This in turn leads to a confidence in making defensible decisions about these issues. Generally law students are not given a conceptual understanding that to be effective in legal practice they need to learn and develop some sense of ethical awareness, and this is problematic because most students learn the law without placing human problems within a moral framework.¹³ Yet, it is argued that this is often the starting place in which first year law students progress from seeing law as polarised (good/bad, innocent/guilty) to a more attentive appreciation of the layers of ethical identity.

¹¹ Of course, as hinted at in Chapter 8, this places at a distance positive philosophy which emphasises the separation of law from community and personal values. But Ross argues that although not totally abandoned, positivism has been intellectually repudiated by Simon who has shown that it leaves no room for non-legal norms: Ross, above n 5, 26 referring to W Simon, ‘Should Lawyers Obey the Law?’ (1996) 38 *William and Mary Law Review* 217.

¹² Ross, above n 5, 49.

¹³ *Ibid* 25.

‘Ethics depends upon assumptions about each other, the world, and ourselves. ... We rely upon these assumptions without giving much thought to them and do not, for the most part, ever attempt to articulate them.’¹⁴ Students must therefore develop ethical awareness as part of their legal education in order to be aware of their own assumptions and positions and to further benefit from the transformation process that is so actively taking place. Just as law school provides the arena in which to learn the law, develop skills of critical analysis and to refine problem solving skills, so too could it explicitly incorporate aspects of learning about one’s perceptions, values and ethics. It is crucial that, before struggling with the complex demands of professional legal practice, students ‘confront ethical dilemmas ... in order to begin to discover (or construct), question, and articulate their own moral views’.¹⁵

Webb urges that the effects of providing an opportunity for students to understand ethics (widely conceived as I have argued in the previous chapter) are potentially significant.¹⁶ By making students aware of the varied ethical dimension to lawyering, they are forced to explore their processes of identity construction. That is, it is possible to encourage students to be aware of the ethical assumptions and positions upon which they can articulate and justify their decisions; and through which they continue the process of ‘becoming’.

Such an approach makes students aware that they in fact have a moral point of view and requires students to justify their position. This in turn requires a choice. A student who has had to consider ethical matters can no longer be ethically lazy and simply adopt the stance of is or her forbears, or the dominant ethos of the profession, without criticism.¹⁷

¹⁴ James R Elkins, 'Lawyer Ethics: A Pedagogical Mosaic' (2000) 14 *Notre Dame Journal of Law, Ethics & Public Policy* 117, 214.

¹⁵ A Hutchinson, 'Legal Ethics in a Fragmented Society: Between Professional and Personal' (1998) *International Journal of the Legal Profession* 175, 189.

¹⁶ Webb, above n 4, 125-6.

¹⁷ *Ibid.*

Along these lines, Robertson contends that a renewed focus on ethics within legal education requires law schools to embrace a 'judgment' approach to legal ethics.¹⁸ This broad conception of ethics in legal education seeks to encourage students to develop ethical judgment and is an objective that is not presently emphasised in law schools.¹⁹ It is important that students develop an appreciation of the lawyer's responsibility to make difficult ethical choices in a variety of situations. It also means that 'reflective deliberation and justification for choices is itself a key professional attribute (perhaps, the lawyers' 'super skill'?).²⁰

The justification of decisions thus becomes a central learning objective. Parker too argues for a more explicit teaching of the reasoning or judgment process which connects the application of rules with the more contextual and social understanding of the role ethical awareness plays in everyday lawyering:

...we should focus some more attention on making explicit to our students the underlying assumptions, tools, and processes of thinking that we use, ... to put life, theory, and rules together to make [ethical] judgments about both specific individual practices and the practices of the whole profession.²¹

This renewed focus as advanced by Robertson and Parker supports the premise underlying this thesis that students are in a wonderful stage of transformation and have the potential to develop an understanding of the complicated relationship between law and their ethical judgment. In the previous chapter, I argued that speaking of ethics in terms of identity is a more appropriate way in which to connect ethical decision-making within the wider moral discourses of culture. I also further argued that law students are constructing identity through a narrative approach to ethical issues. On this basis, the argument posited here is for legal education to

¹⁸ Michael Robertson, 'Renewing a Focus on Ethics in Legal Education?' (Paper presented at the Australian Lawyers and Social Change, Canberra, 2004), 4.

¹⁹ Ibid 4-5.

²⁰ Ibid 4.

²¹ C Parker, 'What Do They Learn When They Learn Legal Ethics?' (2001) 12(1 & 2) *Legal Education Review* 175

acknowledge the growing capacity for ethical judgment by students as a crucial activity within the students' identity construction.

Developing ethical awareness and judgment is a complex on-going process. The range of contexts that demand an ethical response require a constant shift of focus and approach.²² A personal awareness of self will give students something to fall back on when the rules do not provide any guidance. An understanding of their processes of ethical judgment will help them to make appropriate decisions when balancing competing interests; and will help them to develop a consistent sensitivity to what is appropriate behaviour in their daily activities as a lawyer.²³ These justifications for encouraging students towards ethical competence and awareness are firmly based within an objective of showing them that 'the important thing is not so much what they think, but that they think about the moral dimension of law and how it ought to be practiced'.²⁴ Along these lines, it is strongly argued that to attend to the development of students' ethical awareness would enable a more effective utilisation of the students' transformative journey within law school.

B The Role of Law School in Encouraging an Ethical Self-narrative

It is argued that 'the touchstones for becoming a professional lawyer are the individual traits of integrity, self-worth, and self-expression'.²⁵ Constructing identity within a legal context is therefore critical for students as a means of understanding and expressing the self in terms of both mind and character. In order for legal education to capitalise on the transformative process experienced by students as they 'become' lawyers, it would mean acknowledging the role of critical reflection and awareness in self-actualisation. However, some argue that legal education often seems to operate antithetically to this: 'Any desire for personal expression is directly

²² Michael Hill, *The How and Why of Love: An Introduction to Evangelical Ethics* (2002), 259.

²³ Ross, above n 5, 10.

²⁴ Kim Economides, 'Learning the Law of Lawyering' (1999) 52 *Current Legal Problems* 392, 408.

²⁵ Frank Pommersheim, 'Voice, Values, and Community: Some Reflections on Legal Writing' (1988) 12(4) *Legal Studies Forum* 477, 477.

or indirectly cast aside as inappropriate or irrelevant, and, even, at times, with ultimate derision as weak or 'soft'.²⁶ Horwitz also articulates it thus:

Throughout most of human history, law and justice have been inextricably linked. By contrast, one of the most important hidden messages in the modern law school curriculum is contained in the varying contrast between 'tough-minded' and 'tender-minded', 'rational' versus 'emotional' or 'law' versus 'justice'...To become a real professional, you are often taught, you must be cool, unemotional, and not confuse 'strictly legal' considerations with those of justice and morality. Little by little, many [Harvard Law] students refashion their identities to correspond to the bureaucratic technocratic image of professionalism that is part of the hidden curriculum.²⁷

Here, it is acknowledged that just like the students of this study, Harvard Law students too exhibit the experience of transformation during their legal training, albeit an arguably negative one. It has indeed been argued that many law schools actually do students a disservice by divorcing law from morality and personal ethics, and that legal education has the potential to threaten and undermine the active awareness of personal identity.²⁸

The analytic focus of legal education often drains attention and meaning away from the political and moral values inherent in many legal problems. ... Students need to scrutinise the values inherent in law as well as how these values correspond with personal values.²⁹

However while some law schools have instituted ethics components within their curriculum as a compulsory or elective subject, and others leave it to their clinical legal programs to incorporate legal ethics issues into the curriculum,³⁰ very few allow for the exploration of ethical development espoused in the previous chapter.

²⁶ Ibid 482.

²⁷ Morton Horwitz, 'Resist Cult of Complexity, Paralyzing Skepticism' (1986) 83(1) *Harvard Law Rec* 6 quoted in Pommersheim, above n 25, 484.

²⁸ Ross, above n 5, 41; see also Andrew Goldsmith, 'Warning: Law School Can Endanger Your Health!' (1995) 21(2) *Monash University Law Review* 272 generally.

²⁹ Pommersheim, above n 25, 485.

³⁰ Ross, above n 5, see Chapter 1.

To look at the standard first-year curriculum, there is usually very little to allow for the exploration of the ethical judgment dimension of lawyering. Often, there is the typical arrangement of doctrinal courses with the pedagogic fulcrum of formal rule analysis (such as contracts or criminal law) combined with skills acquisition through courses on legal research, writing and communication skills. Yet, there is very little in the program that takes the construction of personal ethics (nor the development of critical reflection) as its specific educational objective.³¹ Indeed, across the full degree program, later year curricula do not seem to achieve much differently. As Baron and Greenstein have noted, most courses (especially doctrinal) are aimed at specifically defining that particular field via primary sources of law, and therefore do not seek to explore the 'ethical dimensions of the lawyer's role'.³² The Australian Law Reform Commission suggested nearly ten years ago that ethics should be incorporated into all law subjects irrespective of whether a separate 'ethics' course was offered already,³³ and although this has widely been accepted in theory, its implementation still seems to pose significant challenges for most law schools.³⁴ In fact, a recent AUTC Report quite clearly describes ethics learning among law schools to be inconsistent and ineffective for the wider pedagogic goals described above.³⁵ The report shows that while all but two Australian law schools incorporate ethics in the LLB curriculum, most are still concentrated on professional conduct with an emphasis on practical ethical problem solving, rather than allowing for an exploration

³¹ Some institutions offer subjects in first year which broadly touch on these issues. For example Wollongong University offers *Foundations of Law B* which aims to direct some attention to ethical issues in the context of narrative over several weeks. ANU also offers a subject entitled *Lawyers, Justice and Ethics* for first year students which explores the ethical dimension of legal practice in a critical and contextual manner (but does so within a broader framework of professional conduct).

³² Jane B Baron and Richards K Greenstein, 'Constructing the Field of Professional Responsibility' (2001) 15 *Notre Dame Journal of Law, Ethics and Public Policy* 37, 43–45.

³³ Australian Law Reform Commission, 'Rethinking Legal Education and Training' (ALRC Issues Paper 21, Australian Government, 1997) [5.19].

³⁴ Paul O'shea, 'The Complete Law School: Avoiding the production of 'half-lawyers'' (2004) 29(6) *Alternative Law Journal* 272, 273.

³⁵ Richard Johnstone and Sumitra Vignaendra, 'Learning Outcomes and Curriculum Development in Law ' (A report commissioned by the Australian Universities Teaching Committee (AUTC), 2003). These wider pedagogic goals as expressed in the previous section incorporate more than an education in the extent of professional guidelines. The report states that most law schools aspire towards an appropriate treatment of legal ethics but do not have any 'formal arrangements to ensure a co-ordinated approach to the teaching of legal ethics and its infusion through the curriculum': at 122. See also Robertson, above n 18, 2.

of possible philosophical frameworks for ethical decision-making and judgment.³⁶ In addition to this, Le Brun's survey of Australian legal ethics teachers found that only a relatively small number of teachers and institutions are openly committed in thought and action to an implementation of legal ethics as described in this thesis.³⁷

Even specific professional ethics courses are, more often than not, 'conceived and conducted with little or no consideration of theories concerning how people learn their [ethical stance], and how and why they respond to moral issues and situations.'³⁸ Positivism, with its corresponding leaning towards legalism, 'teaches that it is impossible to engage in rational, professional forms of critical discourse',³⁹ and law students 'learn to think of law, generally, and professional responsibility, specifically, as disengaged from moral considerations'.⁴⁰ As described in the previous section, ethical decision-making cannot always be directed or defined by professional guidelines, and there is much more to fostering ethical identity and being an ethical lawyer than being able to identify and apply the rules.⁴¹ The treatment of professional responsibility as the 'law of lawyering'⁴² within legal education only satisfies the

³⁶ An interesting exception is Macquarie University, which provides an elective subject entitled *Law and Moral Dilemmas* with the following objectives: 'The aim of this unit is to explore the intersections between law and morality. A range of contemporary and controversial legal issues will be explored by reference to the moral choices that inform and underly [sic] legal choices. Students will gain an understanding of the underlying moral arguments and an ability to evaluate them, both of which will facilitate critical analysis of the law and proposals for law reform in many areas': *LAW530 - Law and Moral Dilemmas* (2004) Macquarie University <<http://www.law.mq.edu.au/html/undergraduate/unitdesc/law530.htm>> at 17 October 2006. The University of Melbourne Law School also offers *Legal Ethics* which is a later year subject aimed at 'introduc[ing] different moral approaches to legal ethics, focusing on the justifications for and criticisms of the traditional adversarial advocate approach and alternatives to it': *Legal Ethics* (2005) University of Melbourne <<http://undergraduate.law.unimelb.edu.au/go/objectid/AB4054CC-B0D0-AB80-E29D5CAB01437FA8/view/overview/sid/2804>> at 17 October 2006. This subject, while providing students with practical tasks to think through and articulate ethical approaches to various fact scenarios, still does so within the broader context of professional regulation.

³⁷ M Le Brun, 'Enhancing Student Learning of Legal Ethics and Professional Responsibility in Australian Law Schools by Improving our Teaching' (2001) 12(1 & 2) *Legal Education Review* 269, 277.

³⁸ G M Dickinson, 'Moral Development Theory and Clinical Legal Education: The Development of Professional Identity' (1984) 22 *University of Western Ontario Law Review* 183, 184.

³⁹ Jamie Cassels and Maureen Maloney, 'Critical Legal Education: Paralysis with a Purpose' (1989) 4 *Canadian Journal of Law and Society* 99, 112.

⁴⁰ Baron and Greenstein, above n 32, 39. They further argue that '[t]he overall effect of the legalistic model is to inculcate what we call a "pothole" conception of ethics, in which ethical issues are understood as "problems" and "dilemmas" which lie along the otherwise morally smooth road of legal practice and which the attentive lawyer can anticipate and either avoid or safely negotiate': at 40.

⁴¹ Robertson, above n 18, 1.

⁴² See Chapter 8 Section IIB for an explanation of the phrase 'law of lawyering'.

pedagogic objective of alerting students to the practices for which they will be subject to punishment.⁴³ It does nothing to invert the ‘common mindset that ethics learning can be confined to a single subject in the curriculum’ and thereby denies the ‘relevance of ethical decision-making in other parts of the curriculum’.⁴⁴ Although it is important to educate about the regulatory and sanctioning systems governing lawyer activity, this ‘cannot and should not be equated with lawyer ethics’.⁴⁵

Teaching students to develop ethical judgment as part of identity construction could therefore comprise a more central concern of educational objectives. It is argued that there is much scope for legal education to open the door to a conception of legal ethics that sees students empowered to, rather than inhibited from, exploring and constructing ethical judgment and identity construction. One possible strategic approach to facilitating these learning objectives has been considered in the Griffith Law School, where ethics awareness is seen as part of a “vertical subject” that progresses throughout the entire degree program in a carefully constructed manner.⁴⁶ This approach conceives of ethics awareness as being developed incrementally among various subject areas, with points of intersection being determined by the relevance of ethical issues to the particular subject in question.⁴⁷ Also known as the ‘pervasive method’ and often touted as the solution to the lack of ethics teaching in the US and UK,⁴⁸ this approach has been criticised because it has the result of

⁴³ Elkins, above n 14, 203.

⁴⁴ Robertson, above n 18, 4.

⁴⁵ Elkins, above n 14, 202.

⁴⁶ For a brief overview of this approach see Robertson, above n 18, 7. In particular, he focuses on the need for students and staff to be willing to explore other disciplines as ‘part of a commitment to having students learn about a broader conception of ethical responsibility’: at 7.

⁴⁷ Ibid.

⁴⁸ See especially D Rhode, *Professional Responsibility: Ethics by the Pervasive Method* (2nd ed, 1998). This model is also in line with the urgings of the Honourable Justice Kirby of the High Court. In a speech urging a re-evaluation of ethical conduct among lawyers, Justice Kirby recommended that law schools do more than just provide a ‘rudimentary training’ in the provisions of professional guidelines: The Hon Justice Michael Kirby, ‘Legal Professional Ethics in Times of Change’ (Paper presented at the St James Ethics Centre Forum on Ethical Issues, Sydney, 23 July 1996), at point 7. He also argued that ‘it is a matter of infusing all law teaching with a consideration of the ethical quandaries that can be presented to lawyers in the course of their professional lives’: at point 7. But, as will be argued in the remainder of the chapter, much more than simply ethics infusion is required to address students’ development of ethical awareness as a critical ability that is crucial to their legal identity construction.

teaching ethics in a somewhat fragmented and superficial manner.⁴⁹ Webb argues that even if a law degree program employs a pervasive approach to ethics teaching, a more concentrated opportunity to study the diversity of professional ethics would still be required.⁵⁰

Perhaps in response to this research, it is reasonable to argue that legal education should view ethics teaching as crucial to viewing the law as a social phenomenon.⁵¹ In this way, a greater emphasis could be placed on allowing students to explore their personal, ethical, and critical development as they experience the transformative process of first year law. This process has the potential to provide a unique opportunity to encourage and promote rather than stultify the utilisation of students' ethical and identity awareness.

I am not proposing however, that teaching ethics in terms of identity should replace the emphasis currently placed on professional regulation; instead, I am strongly urging that a focus on ethical identity be an equal supplement to it. Ethical questions arise in every subject, and so 'talking and learning about ethical judgment needs to be embedded as broadly as possible across the curriculum'.⁵² Perhaps this would mean employing more opportunities for ethical discussion within each subject to stimulate the exercise of judgment within students. Or perhaps it requires specifically dedicated space within the schedule to emphasise the role of personal ethics in practitioner discretion. This will be discussed more fully in the following sections, but it is important to argue that whatever the method, students must be encouraged to understand that lawyers do have to make personal choices as part of their decision-making processes. That is, the role of ethical judgment in the life of a lawyer should

⁴⁹ In addition, a difficulty exists in compelling teachers to ensure the ethical dimension is incorporated into their learning methods and objectives (especially when some harbour antipathy towards its integration within an undergraduate degree). See Webb, above n 4, 118: 'It is not enough to mention to the torts lecturer that they should "throw in" some professional negligence issues and explore the ethical dimension, or that the equity classes should touch on the ethical issues involved in the lawyer's fiduciary obligations. The relationship between these doctrines of substantive law and the professional and ethical responsibilities of lawyers is complex and requires particular consideration'.

⁵⁰ Webb, above n 4, 118.

⁵¹ Johnstone and Vignaendra, above n 35, 123.

⁵² Robertson, above n 18, 4.

be emphasised rather than suppressed.⁵³ Indeed, practising law is inescapably ethically charged and necessitates the inclusion of ethics awareness within any law school curriculum.⁵⁴ As Cranston has asserted law teachers do have ‘a responsibility to sensitise students to the ethical problems they will face as practitioners [and] to provide them with some assistance in the task of resolving these problems’.⁵⁵ Doing so takes seriously (and positively contributes to) the importance of self-expression and articulation in learning.⁵⁶

III STORYTELLING, ETHICS AND STUDENT IDENTITY CONSTRUCTION

The previous section has shown that legal education can offer great possibilities of strengthening and enhancing the processes that empower and help to construct a self-identity that incorporates ethical judgment. In order to show students how to evaluate the processes that are surrounding and affecting them both intellectually and ethically it is important to recognise that the ‘commitment to values and their realization ultimately defines the self and this complex interaction is central to one’s own sense of integrity and self-worth.’⁵⁷ In this way the deliberate encouragement of ethical awareness and exploration of self can provide critical guidance in the pursuit of students’ personal and professional goals.

Helping students to develop ethical awareness is a positive step towards encouraging self-evaluation and the challenging of world-view orthodoxies.

Humane understanding and sociological insight into legal problems do not naturally surface from the close study of conventional legal materials; they need to be supplemented by explorations of materials from other disciplines in the humanities and social sciences which nevertheless contextualise and generally deepen students’ understanding of legal issues and phenomena.⁵⁸

⁵³ Ibid 6.

⁵⁴ Diana Henriss-Anderssen, 'Teaching Legal Ethics to First Year Law Students' (2002) 13 *Legal Education Review* 45, 48.

⁵⁵ Ross Cranston (ed), *Legal Ethics and Professional Responsibility* (1995), 30.

⁵⁶ Julian Webb, 'Being a Lawyer/Being a Human Being' (2002) 5 *Legal Ethics* 130, 150.

⁵⁷ Pommersheim, above n 25, 484.

⁵⁸ Goldsmith, above n 28, 300.

More significantly a wider context provides the resources required to make ethical judgments. As justifications for choices are made within the bounds of community norms, then contextualising a community wider than the narrow interests of law as a profession is warranted.

The key to encouraging ethical development is thus fostering an environment in law school education where professional responsibility transcends conformity to professionally-determined norms and is treated in the context of wider community ethics.⁵⁹ Law teachers are therefore encouraged to enunciate the connections between ethics and actions in legal practice, and deliberately address within teaching practices ethical questions that require reflection, critique and an awareness of self-identity. One option for achieving this is to recognise the role of narrative. As this research has demonstrated, ethics is one way of linking the discursive practices in which law students tell stories and the identities that they continue to construct – for ethics is constituted in narrative. I have earlier argued that located at the intersection of law, society and fiction, students utilise the transformative power of stories to construct identity and grapple with ethics. It is therefore of central importance to encourage in students a self-awareness of this process so that they can actively and consciously contribute to their reflexive project of the self.⁶⁰

Stories have the ability to train people in the reflection, choice and responsibility that make up the capacity for ethical decision-making.⁶¹ As students continue to deploy stories as a means of understanding ethical dilemmas there is a role for legal education to play in helping them become aware of that process. That is, a philosophy of legal education that picks up on the influence of narrative could be to foster the development of legal identity and empowerment of ethical awareness.⁶² By capitalising on the transformative process of first year law, it is possible for legal

⁵⁹ See Chapter 8. See also Dickinson, above n 38, 184.

⁶⁰ Anthony Giddens, *Modernity and Self-Identity* (1991), 75.

⁶¹ Linda R Hirsham, 'Bronte, Bloom and Bork: An Essay on the Moral Education of Judges' (1988) 137 *University of Pennsylvania Law Review* 177, 179: 'It does so by presenting artificial, but concrete, universes in which premises may be worked out in conditions conducive to empathy but ambiguous enough to allow for the formation of moral judgment'.

⁶² Dickinson, above n 38, 184.

education to sensitise students to the ethical nature of legal practice as part of their identity construction. With this in mind, the chapter now seeks to present a view of teaching legal ethics in a more socially contextual and personally reflective manner. It does so by promoting the value of narrative in actively encouraging the development of identity construction and ethical awareness. This section first outlines the possibilities of generally deploying ethical talk, and second provides more concrete examples for achieving the utilisation of stories within legal education.

A Ethical Talk

We often don't recognise the ethical nature of the problems that confront us, and this is especially so if we have not been taught how to recognise them. Through facilitating class discussions and encouraging extra-curricular student discourse on ethical issues, students can 'puzzle through [their] personal, moral shaped-metaphors and images of professionalism.'⁶³ However, this requires teachers to be providing exposure to the various approaches available to meet ethical issues and to immerse students 'in the anxieties and exigencies of the legal system'.⁶⁴ One way that this could be achieved is by adopting a dialogue-based framework, which facilitates a shift in the 'learning process from the passive end of the teaching continuum towards the active'.⁶⁵

Elkins argues that one specific way to achieve this encouragement of ethical awareness within students is to engage them in ethical talk:

An inquiry into lawyer ethics is rooted in rhetoric not rules. Lawyer ethics grounded in conversation (literally, a course of conversation) about law work becomes ... a theater in which we see actors working out the consequences and meanings of their proposed actions. ... When we act by speaking, the [ethical] dimension of our character "shows through" ...⁶⁶

⁶³ Elkins, above n 14, 146.

⁶⁴ Dickinson, above n 38, 199.

⁶⁵ Webb, above n 4, 116.

⁶⁶ Elkins, above n 14, 127.

Interestingly Rorty views a ‘conversation’ as a metaphor for culture. To him ethical justifications are made within conversation and are bounded by community warrants. The words, opinions and ideas we use in conversation to tell the ‘story of our lives’ is what Rorty terms our ‘final vocabulary’.⁶⁷ In this sense the interconnectedness of ethics, story and identity cannot be ignored. The ‘final vocabulary of any person is that in which long-term projects are formulated, deep hopes and fears are expressed, and the story of one’s life is told.’⁶⁸ As students learn how to use their ever developing skills of critical reflection and analysis to practise law in a way that is both effective and fulfilling, they will simultaneously explore their inner imaginings of themselves as persons and as future lawyers. Their continual exposure to legal culture while at law school will have an effect on their subjective world of thoughts, beliefs, emotions and aspirations. In valuing the ethical dialogue of students, legal education has the potential to empower student awareness of their own final vocabulary and to help them grow by developing and expanding it.

Encouraging students to discuss and evaluate their perceptions and responses to ethical issues engages them in ethical talk. ‘Lawyer ethics taken up in conversation puts ethics back where it belongs – in the spoken, everyday world of connective, communal, constitutive talk.’⁶⁹ It enables students to explore the ways in which various values might be shared and disputed within their cultural community. The effect of this is to empower them to articulate their ethical character and develop their values in order to form a justified basis upon which to make decisions. Such awareness will better enable them to face the greater challenges of life as a lawyer.

It is argued that in order for students to construct and understand their personal ethics, it is incumbent on legal education to facilitate ethical talk. Through discussion, much can be explored by students about the conditions that affect the life of a lawyer and about the ethical concerns they may have about legal practice. Talking through the

⁶⁷ Richard Rorty, *Contingency, Irony and Solidarity* (1989), 73: ‘All human beings carry about a set of words which they employ to justify their actions, their beliefs, and their lives...I shall call these words a person’s “final vocabulary”’.

⁶⁸ Alasdair Macintyre, ‘Book Review: Contingency, Irony and Solidarity’ (1990) 87 *The Journal of Philosophy* 708, 709.

⁶⁹ Elkins, above n 14, 128.

various ethical predicaments that lawyers might face can inspire students to new insights into the way that situations can be interpreted and negotiated. Thinking through these issues together in response to a variety of legal and popular textual stimuli (including stories of lawyers on television)⁷⁰ can cause students to re-evaluate and shape their personal ethics and responsively adjust their ideals and paradigms. Legal education could thus address the need of students to begin the process of thinking and responding, talking and imagining the practice of law and reflecting on the ethical dilemmas they might face. It is just this engagement of critical reflection that will help them to develop and embrace ethical awareness.

Having argued that ethical talk should be taken seriously by legal education as part of the students' transformative process, the following section suggests ways forward for the implementation of methods that seek to stimulate, encourage and foster the students' development of ethical awareness as part of identity construction. In particular, it provides a summary of some uses of reflective narrative in law school curricula.

B Story-telling Strategies and Narrative Inclusion in Legal Courses.

In order to provide what he terms 'full educational nutrition' to law students, Kandel argues that it is crucial that they be engaged in the 'continuous reconceptualisation of the relationships among themselves, the profession, the law, its users, and the broader social and moral order'.⁷¹ In this way, the goal for law students is to engage in interdisciplinary nourishment as a counter-balance to the danger that law students will learn to separate their professional and personal lives to the point of 'unreflective complacency and compliance'.⁷² Such a permutation of student development must be avoided if the facilitation of student awareness of their emotional, intellectual and ethical aspects of self is to be achieved.⁷³ In order to address this interdisciplinary nourishment, Kandel requires his students to engage in substantial ethnographic

⁷⁰ See further Section IV for the use of television as a curricular strategy.

⁷¹ Randy Frances Kandel, 'Whither the Legal Whale: Interdisciplinarity and the Socialization of Professional Identity' (1993) 27 *Loyola of Los Angeles Law Review* 9, 19.

⁷² *Ibid* 20.

⁷³ *Ibid* 21.

research focused on conflict settlement within a targeted community group. The aim is that students will learn ‘how legal culture and client culture mutually construct each other and how to develop the legal imagination to translate the needs of clients into law’.⁷⁴ While a very specific method, this task provides an example to follow that may stimulate student awareness and trigger reflective analysis of personal ethics. Yet, as an assigned task it could be taken a step further to address the students’ use of stories in their conceptualisation of the legal world they inhabit. That is, for example students could be asked to further reflect on this research experience by narrating to the class (or simply journaling) their particular story of interaction with the targeted group.

There are other practical ways in which legal education can utilise, encourage and nurture the students’ critical reflection within the teaching environment, particularly when it comes to assignable work and assessment pieces. Developing a curriculum that causes the learning process to be experienced as something far more than a problem solving discipline is crucial to motivating students to fully tap their personal and professional qualities.⁷⁵ By assigning tasks that require students to question their assumptions, understandings and ethical awareness, students are drawn one step closer to being aware of their personal identity construction. Teaching and/or assessment methods, such as critically responsive writing tasks, keeping a reflective journal of perceptions, or actively dialoguing with other students, could easily be integrated into the curriculum of most substantive and skills subjects.

Dominguez affords one such example of introducing later year law students to critical reflection – he makes their own lives the subject of their first class assignment by asking them to rewrite the personal statements that accompanied their law school applications.⁷⁶ The hope is that for these later year law students it will ‘vividly demonstrate the importance of critical reflection in regaining a more accurate picture

⁷⁴ Ibid 22-3.

⁷⁵ David Dominguez, 'Redemptive Lawyering: The First (and Missing) Half of Legal Education and Law Practice' (2000) 37 *California Western Law Review* 27, 35.

⁷⁶ Ibid 38.

of who they are' and to remind themselves of their brimming idealism and early dreams of social justice.⁷⁷

Elkins too sees much value in assigning specific writing tasks to teach his students the importance of introspection:

The work a lawyer does, the listening and talking we do with clients, the way our encounters and interactions with clients are imagined, conceived, and executed, cannot be divorced from the feelings, fears, failures, hopes, and dreams of the person who is the lawyer. It is this subjective dimension of professional life that we take up in introspective writing.⁷⁸

In engaging students in critically reflective and introspective storytelling they are empowered to explore their own subjectivity. That is, through writing tasks, students can connect the subjectivity that surrounds their total experience of studying law with a conscious reflection on how to live out their legal lives. Perhaps this could take the form of writing about the way they view particular case studies; or providing a vignette of how they see law operating in society; or even more creatively, writing a script or outline for a television show about law.

That students do respond positively to these different tasks is evident in my first year classes. One of the assigned pieces of work in *Foundations of Law A* at the University of Wollongong is to attend a number of court and tribunal proceedings.⁷⁹ The objective is to observe law in action (in particular focusing on access to justice) and then report on their perceptions to the class. Although unsure and nervous at first, most students nevertheless seem to liven up and be happily animated when the time comes to tell their story. Each one seems to relish the opportunity to put their spin on how their perceptions of law has been transformed after just a few visits to the local

⁷⁷ Ibid 36 and 38. This is just one aspect to Dominguez's approach to teaching creative ways to motivate students towards redeeming the lawyer 'as a whole person in order to serve as an example to others': at 49.

⁷⁸ James R Elkins, 'Writing our Lives: Making Introspective Writing a Part of Legal Education' (1993) 29 *Willamette Law Review* 345.

⁷⁹ This is a first year subject aimed at providing an introduction to the various facets of studying law (including its institutions and key concepts). The assignment is a common first year exercise that is often aimed at neutralising student reactions to court processes. See K Laster, *Law as Culture* (1997) 314.

courthouse. The point here is that law students exist in a storytelling culture and learn about themselves when pushed to reflect on it.

Of course, an experience of reflection can take many forms, and can even be prompted by an absence of knowledge or direction. Yet to make the most of legal education is to recognise the great opportunities afforded by both the informal and formal learning environments.

Other forms of emphasising reflection about the law and/or ethics focus on requiring students to produce evidence of that reflection. This could be achieved in the form of a learning diary or report, a critical response journal or an interactive session where students share their stories with one another and seek to jointly make sense of what is being learned and experienced. Another method is to engage students in narrating to each other their responses to television depictions of law and lawyers. I can report on my personal experience of trying this in my first year *Foundations of Law A* classes. In this subject we spend a couple of weeks discussing the merits of the adversarial system, and issues of access to justice. During these classes, I have specifically screened images from both television and film (including *The Practice*, *Ally McBeal* and *A Few Good Men*) in order to generate discussion about the pursuit (or otherwise) of truth in the legal system. These are not only my most popular classes, but also they are the classes that provoke the most free-flowing, confident storytelling from students. Indeed as this research has shown, students exhibit little reticence to discussing and debating the actions of television lawyers. Why not take advantage of this enthusiasm?

Perhaps more simulated ‘real life’ experiences can also play a role in developing both critical reflection and ethical judgment. For example, engaging students in activities where they are given a chance to debrief and reflect at each activity’s conclusion can encourage students to measure what they are currently learning against their previous notions and opinions. Such activities can include role playing, identifying the stories in each case studied, mooted exercises and group problem solving. These have the potential to provoke scholarly enquiry on the part of the student into transformed action, motives and values, laying the foundation for the development of ethical

judgment, and the various elements of critique essential for a holistic education. Apart from the benefit of encouraging students to engage actively in self-reflection which enhances understandings, challenges perceptions and maps emotions; these tasks validate the notion of reflection and critical awareness within the context of formal legal education.

In seeking to encourage the development of ethical awareness and to empower students with critical reflection, the next section of the chapter commends a particular ambition to which legal education might be inspired to strive. One method for recognising the transformative stage of students' legal identity construction is to advocate the use of legal narratives in fostering critical reflection and personal ethical judgment. It is argued that this could especially be achieved by a first year subject that allows for the exploration and encouragement of the students' awareness of the very process they are experiencing.

IV A FRESH APPROACH? THE DELIBERATE USE OF POPULAR STORIES IN FIRST YEAR LAW

Bringing this thesis full circle, it is important to be reminded of students' penchant for popular cultural narratives. A law student's process of becoming a lawyer is a journey of self-discovery and story production that places them centrally amid the interaction of law, society and fiction. Each new batch of first-year students participates in this transformation and through their interpretation of popular stories they actively deploy their critical abilities. If students could be encouraged to be aware of this process and reflect on it, then their reading of popular stories would enable them to become better interpreters of their own lives – that is, of their own perspectives, responses and values. Legal educative practices can ensure that the exploration of such transformed thinking and attitudes is allowed to flourish within class discussions and activities. Only then will students be empowered to be aware of their identity projects and therefore comfortable and competent to articulate their justified personal ethics. For this reason, employing popular stories as a particular teaching strategy is a wise endeavour. Entering law school from an extremely visual

storytelling culture, students are not only familiar with its discursive practices, but they are also comfortable as storytellers, and extremely active in the process of transforming these stories into their own realities.

A The Pedagogical Utility of Popular Stories

An important influence within the law and popular culture scholarship has indeed been the use of legal fiction in visual media as a pedagogic tool within the context of legal education.⁸⁰ The move towards using audio-visual representations of the law to complement or replace traditional teaching resources has been based on the prevalent recognition that students are ‘increasingly visually literate’⁸¹:

many students find the constant diet of appellate opinions served up in the first year, the density and impenetrability of many opinions, and the decontextualized nature of these fragments severed from the full text of the opinion, often unsatisfying and unfulfilling. The legal texts raise questions that cannot possibly be fully anticipated and answered by the supplemental materials in the casebook. Students ... have difficulty imagining and speculating upon what they cannot literally see for themselves... Consequently, many first-year students desire and manifest a psychological readiness for narrative understandings of [law]. [Narrative] provides a marvelous vehicle and opportunity to go beyond doctrinal analysis, and to understand the law in some fuller, deeper and more complete context. This fulfills the needs of many students, and makes them far better students when they return to their own readings of doctrine and cases.⁸²

This argument from Meyer is his rationalisation for specifically using popular media in his criminal law course as a visual context for cases. He argues that it provides opportunities to raise issues often repressed in the casebooks.⁸³ This pedagogic justification is based in the legitimate needs of contemporary students who he views

⁸⁰ See Steve Greenfield, Guy Osborn and Peter Robson, *Film and The Law* (2001); Guy Osborn, 'Borders and Boundaries: Locating the Law in Film' (2001) 28(1) *Journal of Law and Society* 164; and Philip N Meyer, 'Using Non-Fiction Films as Visual Texts in the First Year Criminal Law Course' (2004) 25 *Vermont Law Review* 895.

⁸¹ Meyer, above n 80, 895.

⁸² Ibid 895–6.

⁸³ Ibid 898.

as ‘story-addicts’ and hungry for context.⁸⁴ Australian first year law students are equally accustomed to the nature of popular stories and thrive when given the opportunity to discuss issues raised by popular cultural texts.

Popular law stories then, can be utilised to view law from various perspectives. They can seek to ‘include what has often been omitted, such as the feelings, desires, conflicting impulses and wishes that circulate within the law’,⁸⁵ and they can provide tools for evaluating law as a cultural and social artefact that interacts with the public.

[Stories provide] the opportunity to create a world, to construct an ordered reality where individuals are portrayed as law-abiding or law-breaking, the world as safe or dangerous, as governed by law or violence, and the legal system as effective or not. ...[A story] thereby stimulates creative thinking about solutions to real-world problems such as crime. Because fiction is not limited to describing the way things are, it provides the opportunity to think about the way things might be.⁸⁶

This thesis is based on such a utility of stories, and when coupled with an understanding that law students are actively transforming meaning and identity in relation to the law, it seems negligent to not employ this resource within legal education.

Yet the use of stories is not necessarily new in legal education. Although not completely commonplace in law schools, the use of legal popular culture is becoming more prevalent.⁸⁷ Some legal institutions have successfully implemented law and film courses that are specifically designed to engage students in a critical evaluation of

⁸⁴ Ibid 897.

⁸⁵ Richard Sherwin, 'Symposium: Introduction: Picturing Justice: Images of Law and Lawyers in the Visual Media' (1996) 30(Summer) *University of San Francisco Law Review* 891.

⁸⁶ Timothy O Lenz, *Changing Images of Law in Film and Television Crime Stories* (2003) 11.

⁸⁷ Philip N Meyer, 'Convicts, Criminals, Prisoners and Outlaws: A Course in Popular Storytelling' (1992) 42 *Journal of Legal Education* 129, 132 (discussing legal films as a pedagogical tool to reacquaint law students with the ‘discontinuity and inexplicability of the lives they will encounter as lawyers’); Philip N Meyer, 'Law Students Go to the Movies' (1992) 24 *Connecticut Law Review* 893 (discussing Meyer's experimental course entitled Law and Popular Storytelling).

filmic portrayals of law.⁸⁸ Wollongong University's Law Faculty also incorporates elements of rhetoric and judicial narrative into one of its foundational courses.⁸⁹

This research however, suggests taking these approaches even further. Rather than simply treating the popular media as both legal and cultural texts in order to evaluate critically legal issues, practices and institutions, it is argued that a designated subject could *use* the popular stories as an avenue to student exploration of ethics and identity. That is, by using popular stories as a stimulus to increased dialogue and reflection on the *ways* students respond to the law, such a subject would be different to the current approach described above. With the emphasis placed not on the students' responses to popular stories, but instead on *how* those responses are constructed and challenged, the issues surrounding ethical judgment could be deliberately addressed. Thus, focussing on the imbrication of stories, ethics and identity (as described in Chapter 8) is key to producing a fresh approach to both legal ethics and narrative. In addition to using popular stories from the media, such a subject could therefore call on stories in literature, stories in judgments and stories of students to stimulate awareness of ethics and identity.

To illustrate the relevance of a subject like this in the first year student's transformative development, it is helpful to recall the research as analysed in Part II of this thesis, which clearly showed the frequent use, by students of stories in student

⁸⁸ See James R Elkins, 'Reading/Teaching Lawyer Films' (2004) 28(Summer) *Vermont Law Review* 813 and Meyer, above n 80 for their advanced uses of legal films among law students. The introduction of a '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': Steve Greenfield and Guy Osborn, 'The Empowerment of Students: The Case for Popular Film in Legal Studies' (1995) 10(2) *Focus on Legal Studies* 6, 6. Asimow too, teaches an elective course *Law and Popular Culture* at UCLA that focuses heavily on film. He describes it as 'enormously popular and heavily overenrolled': Michael Asimow and Shannon Mader, *Popular Culture: A Course Book* (2004), xxiii: 'Frequently, sixty or seventy students apply for the sixteen open slots'. Much has been written and documented about the benefits of these types of courses in the US, in which various institutions have recognised the benefits of these subjects since the 70s: Alan A. Stone, 'Teaching Film at Harvard Law School' (2000) 24(3 & 4) *Legal Studies Forum* 573; John Jay Osborn Jr, 'UFOs in the Law School Curriculum: The Popularity and Value of Law and Literature Courses' (1990) 14(1) *Legal Studies Forum* 53; Anthony Chase, 'On Teaching Law and Popular Culture' (1988) 3(2) *Focus on Law Studies: Teaching about law in the liberal arts* 1.

⁸⁹ *Foundations of Law B* is a first year subject that seeks to explore and critique law from various perspectives including a study of narrative jurisprudence and 'poethics'.

identity construction and the questioning of ethics. In particular students were shown to utilise ethical stories as a provocation into reflecting on how they would behave in similar circumstances. It is the elements of reflective discussion, exploration of meaning and personal responses (as exhibited in student stories) that should characterise a subject such as that proposed here. It is exciting to think that legal education could not only play a stronger part in this development of students' critical reflection, but also foster in them an ability to see and personally reflect on this process at work. The final portion of this chapter therefore suggests that introducing a critical jurisprudence with the use of stories at an early stage within the law program will empower students to develop ethical judgement and awareness of identity construction.

B The Aims of a Focus on Narrative

A story approach to addressing students' identity construction and ethical development allows students to reflect on and learn from their own and others' stories. A subject dedicated to narrative in this way would therefore be concerned with the sole objective of engaging students in the stories of popular culture and of law, and inviting them to reflect on, interpret, and share with each other the retelling of their responses to them. As such, it goes further than other legal educative approaches to a study of law and popular culture, which seem to be focused more on the ways in which law is represented in particular media. It goes further because it takes advantage of the transformative process at work in the first year law student, and it seeks to recognise the intricate links between ethics and identity. By giving students the opportunity to construct identity and develop ethical judgment through the articulation of their own stories, this subject would be a fresh approach within legal education.

The elements of interaction and reflection are key to addressing the first year law student's transformative process. A subject concerned primarily with stories is the perfect forum in which to address these elements and to empower students to explore issues and ideas that confront and challenge them. In its implementation such a

subject would ideally incorporate the analysis and reflection of a wide range of sources, including media, fictional literature, the law⁹⁰ and importantly the students' own experiences. The selection of stories would be based on their potential for challenging settled expectations about law, raising ethical questions and causing students to reflect on their own perspectives. As the students articulate their storied responses to popular narratives, they participate in learning through reflection: 'to narrate a story is already to reflect upon the event narrated'.⁹¹ More than this though, as they (re)tell stories, so they construct meaning and identity.

Drawing on stories enables students to approach the course from a position of strength and confidence, and can give them an opportunity to evaluate, question and articulate their own passions, perceptions and values. By discussing popular cultural representations of the law, by engaging in storytelling and simply by living their lives, students are critically negotiating their own process of legal identity construction and enhancing their own theoretical sophistication.

In order to respond to the needs as outlined by this research, it is relevant to consider the aims for teaching a subject that centrally addresses narrative. It is thus argued that, such a subject could be designed with four key aims in mind:

- to enable students to examine the philosophical underpinnings of the law from the perspectives of other disciplines and the way in which it intersects with /impacts on culture;
- to assist students to develop an appreciation of their own meaning-making processes and an ability to reflect on them;
- to encourage students to develop an awareness of their ethical development as imbricated in identity construction; and
- to recognise stories in law, in popular culture and in their own lives.

⁹⁰ This includes the legal stories found in parliamentary transcripts judicial opinions, commission reports and tribunal findings.

⁹¹ P Ricoeur, *Time and Narrative* (1986) 61 quoted in Mark B Tappan and Lyn Mikel Brown, 'Stories Told and Lessons Learned: Toward a Narrative Approach to Moral Development and Moral Education' (1989) 59(2) *Harvard Educational Review* 182, 192.

Although at one level the subject could aim to deepen student appreciation of the permeable interactions between law and popular culture, it could further expect that students will be encouraged to begin the process of seriously considering questions about law and its implications for practice. That is, upon completion of the subject students could (even in elementary first year stages) be involved in the following learning aspects:

- actively transform their own meaning about lawyering practices;
- reflect on their personal response to ethical dimensions of lawyering;
- question assumptions about the relationship between law and justice; and law and morality;
- articulate their justifications for decision-making (ethical or otherwise).

By developing these capacities, first year law students can increase their potential for self-reflection. This will then mean that their remaining time at law school is enriched with an ever deepening ability to explore the meaning of lawyering through a variety of textual contexts; which in turn spurs the cumulative development of confidence in critical writing, critical analysis, interpretation, personal reflection and story-telling.

The significance of a subject such as the one broadly suggested lies in its potential for learning about the self. That is, it provides an alternative way of thinking about how law interprets and adjudicates competing stories.⁹² As this subject would be neither a skills nor a substantive subject per se, it is thus free to deal explicitly with the students' exploration of stories, particularly in relation to the construction of self-identity and ethical judgment. By having an opportunity to express their responses to various legal issues as presented in stories, they are able to learn how to express clearly and acknowledge not only their thoughts and emotions, but also their ethical perspective.⁹³ They are taking responsibility for these thought processes, so that as they articulate their response or argument, they are taking a stand for their developing self-identity (even perhaps in the face of disagreement or conflict).

⁹² 'The traditional process of making students "think like a lawyer" has disconnected them from real world thinking': Osborn Jr, above n 88, 54.

⁹³ Tappan and Mikel Brown, above n 91, 190.

Students ultimately need confirmation through their education that their experiences and perspectives (while sometimes challenged) are valued and worth exploring in order to come to grips with the forces at work in legal practice. Attending to the connection between ethics, identity and stories within legal education would provide a wonderful opportunity to provide this confirmation. To do so would enable students to modulate and synthesise the wide range of influences and resources that are informing their understanding of the law and legal culture. Not only this, but implementing it within first year is crucial to law student development because it will establish the capacity students need to make the vital decisions regarding how they will live their lives as lawyers.⁹⁴ As Lesnick rightly argued,

it is what is imprinted in that initial immersion [in first year], and not any broader message of the [following] years that shapes students' consciousness of what is important and not important to being a lawyer.⁹⁵

V CONCLUSION

Taking the students' transformation seriously, it is important that legal education offer students the chance to articulate their perspectives, choices and justifications about aspects of lawyering within a comfortable environment of peer evaluation. Enabling students to challenge themselves and each other in this way has substantial benefits. It is clear that stories can be used as a window to student perspectives, and can be further utilised to empower students to explore and challenge the ideas and expectations that are important to them.⁹⁶ A resultant positive effect is that students will be able to identify and evaluate their personal ethics in order to continue the construction of legal identity.⁹⁷ In this way, a task of legal education could be the implementation of strategies seeking to provide the foundations for continued

⁹⁴ Russell G Pearce, 'Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School' (1998) 29 *Loyola University Chicago Law Journal* 719, 736.

⁹⁵ Howard Lesnick, 'Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum' (1990) 37 *UCLA Law Review* 1157, 1159.

⁹⁶ Stone, above n 88, 577.

⁹⁷ '...the introduction of some of the groundwork for ethical awareness at first year level would be an improvement on the current absence of broader ethical teaching': Henriss-Anderssen, above n 54, 55.

development of ethical judgment and identity construction over the course of the degree. Henriss-Anderssen argues that ‘in order to develop ethical judgment students must be exposed to ethical issues as they arise in the course of their studies’ and that a first year subject should ideally be supplemented by follow up in later year courses (such as jurisprudence or applied ethics).⁹⁸ This is the approach recommended by this research. A subject focussed on stories can provide early opportunities to capitalise on the transformative process that students experience in their first year. By exploring through popular stories the students’ construction of identity and the development of their personal reflective abilities, an attention to ethical judgment can be introduced. The expectation is that having such a base in their first year, students can then exponentially increase over the course of their degree the challenge, transformation and construction of meaning, identity and judgment.

This thesis has sought to firmly establish the triangular connection between students, stories and ethics. It has argued that students use stories to explore aspects of their own ethical development and identity construction. As such, this chapter has made suggestions for incorporating these elements of the first year law students’ transformative journey into concrete pedagogic aims. Within that context, a fresh approach to teaching ethics and stories is conceived and commended as a way in which student self-actualisation can be facilitated. As this research has shown, students clearly make the connection between popular stories and their own life journeys. It is important that legal education acknowledge this.

⁹⁸ Ibid 54.

CHAPTER 10

THE FINAL DENOUEMENT

Law and popular culture are two extremely prolific narrative regimes.¹ It is little wonder that law students (and those in first year especially) are both attracted to, and comfortable with the stories of popular culture. The major thrust of this thesis has been to engage with the discourses of law and popular culture through the ‘talk’ or stories of first year law students, in order to explore the ways in which they construct meaning about ‘being’ a lawyer. Although the project was originally conceived within the framework of evaluating the influence of fictional television on law student perceptions, it quickly became apparent that if student talk was to be viewed as a construct of cultural discourses, then a focus on the meaning-making practices of students was much more appropriate. As such, the research sought to explore the assumptions, values, and meaning-making processes of first year students rather than simply identifying any supposed ‘effect’ on their attitudes.

As was shown in Chapter 2, the first year law student is located within a unique transitional position amid law, society and fiction. By virtue of their shared involvement in each of these domains, students are in a significant stage of transformation, and actively engage in the interpretation and production of stories. As they begin to traverse this new world of ‘law’, students contribute to and learn from legal culture. Chapter 3 thus sought to explain the connections between law, culture and discourse by recognising that culture is a contested site within which individuals encounter and construct meaning. Slipping across discursive boundaries, the students’ participation in law school can be seen as a transformative process that contributes to their ongoing construction of identity. In Chapter 3 this connection between identity construction and transformation was explored within the context of the ‘identity

¹ D Black, *Law in Film: Resonance and Representation* (1999), 1.

project'. There it was argued that an individual's continual construction of identity builds on past encounters and draws on present experiences to form a trajectory of the hoped-for future. In this way, the first year of law school acts as one very large conduit for the students' identity projects.

Having acknowledged in the early chapters this particular complexion of first year law, Chapters 4 and 5 outlined how the research was practically able to achieve a focus on law student meaning-making and identity construction. Drawing on cultural studies theories, the research proceeded on the basis that audiences are active in their viewing behaviours. That is, Chapter 4 outlined how students are active producers of meaning from within their own cultural context² and employ television legal fiction as a resource not only to construct meaning about law, but also to develop legal identity. The central methodological aim was to have first year law students discuss together their responses to law as presented on television dramas, in order that their 'talk' might be interpreted and explored. This talk of the students was shown to be constitutive of identity. That is, first year law students were understood to negotiate through their talk shared understandings about how to 'go on' in the cultural intersection in which they currently exist.³

The analysis that this talk generated was therefore centred on two main grounds. The first was that students employ popular cultural resources to contribute to their legal identity projects, which incorporates both the construction of expectations and aspirations in relation to a career in law, and the development of an ethical stance. The second ground of analysis revealed that through their interaction with popular stories, students are developing critical abilities in reflection, analysis and self-awareness. These two grounds provided the basis for the analysis described and explored in Chapters 6 and 7. In Chapter 6, the analysis of focus group discussions revealed that despite a fervent attraction to the status and lifestyle that is seemingly attendant with a career in law, students also have strong expectant desires of their future careers running to the depth of idealistic altruism. It was shown that first year

² Chris Barker, *Cultural Studies: Theory and Practice* (2000), 269.

³ Chris Barker and Julie Andre, 'Did you see? Soaps, teenage talks and gendered identity' (1996) 4:4(November) *Young* 21, 23.

students are painting a picture of legal identity that is extremely idealistic – one in which social altruism, and the pursuit of ethical behaviour are active goals.⁴ The notions of ‘making a difference’, and embodying the ‘good’ lawyer who helps the innocent, were consistent and recurring aspects of the students’ identity construction and reflected a strong sense of student idealism. Connected in some ways with their desires to live fulfilling legal lives, it was further argued that law students polarise the way they view ethical actions in order to construct identity. In that chapter, it was argued that such idealism and ethical evaluation should not be discouraged, but harnessed towards an active ethical construction of legal identity. This argument was renewed in Chapter 8 where it was posited that law schools should capitalise on students’ willingness to develop their personal ethics.

It is argued that law school has the potential to motivate students to express an active fulfilment of self and become aware of ethical identity construction. As fostering ethical judgment in one sense could be seen as going to the ‘soul of the profession’,⁵ it is important to recognise that students are primed and ready to be engaged in self-reflection, critical evaluation, and awareness of ethical identity construction. Chapter 7 revealed the ability of law students to reflect critically on the way they construct meaning and identity. Through the students’ storied responses to television narratives, they showed their capacity for a wide range of critical reflection and self-evaluation. As students express their critical responses to various legal and ethical situations they articulate a transformative process of identity construction. For this reason, Part III has specifically argued that legal education should explicitly seek to accommodate and harness the possibilities afforded by this development. That is, a law school education needs to place a high priority on (a) the ethical development and (b) the identity awareness of its students. The exciting nature of this research is that it shows the particular role stories can play in addressing both (a) and (b) in legal education.

Chapters 8 and 9 therefore argues that legal pedagogy address two main issues: first to acknowledge and prioritise the role of stories in a reflective development of legal

⁴ See Chapter 6 Sections III and IV.

⁵ James E Moliterno, 'Experience and Legal Ethics Teaching' (2001) 12(1 & 2) *Legal Education Review* 3, 9.

identity construction; and second to encourage the development of ethical judgment as part of that identity project. The premise underlying this thesis has been the enhancement of students' critical reflection and ethical development while in their most transformative time at law school. Rather than convincing students that they are entering into a 'simplified ethical world, one in which ordinary moral principles are cleared away by the hegemony of doctrines unique to the practice of law'⁶, it is crucial that teaching methods emphasise the value of students' ethical development.

To this end Part III has sought to commend and encourage law teachers, individually and collectively, to review attitudes and educational objectives in order to more effectively capitalise on the transformative journey of students through the use of stories. More specifically, the thrust has been to commend the following pedagogic attitudes and practices:

- The recognition that students are actively using stories to construct identity and develop understandings of the self, and that this will contribute to an effective and satisfying approach to legal practice.
- The continual emphasis and attention on the students' capacity for critical reflection and storytelling.
- An intention to help students develop ethical judgment so that they can understand and approach ethical problems with confidence in their decision-making ability, and effectively articulate the justifications for the choices they make.
- Curricular integration where learning objectives and assessment practices place a value on stories, student reflection and personal introspection.
- The possibility of a designated first year subject that uses stories (fictional and legal) as its primary resource.

There is no doubt that legal education is a transformative time in a student's life. It is incumbent on law teachers to help them maximise this time by helping them to become aware of ethics as an integral part of identity construction.

⁶ Jane B Baron and Richards K Greenstein, 'Constructing the Field of Professional Responsibility' (2001) 15 *Notre Dame Journal of Law, Ethics and Public Policy* 37, 38.

BIBLIOGRAPHY

I BOOKS, ARTICLES, REPORTS

- Abel, Richard L, *American Lawyers* (1989)
- Aiken, Jane Harris, 'Striving to Teach "Justice, Fairness, and Morality"' (1997) 4 *Clinical Law Review* 1
- Allen, Judy and Baron, Paula, 'Buttercup Goes to Law School: Student wellbeing in stressed law schools' (2004) 29(6) *Alternative Law Journal* 285
- Allen, R, *Channels of Discourse Reassembled: Television and Contemporary Criticism* (1992)
- Allen, R (ed), *To Be Continued...Soap Opera Around the World* (1995)
- Amsterdam, Anthony G, 'Clinical Legal Education – A 21st-Century Perspective' (1984) 34 *Journal of Legal Education* 612
- Amsterdam, Anthony G and Bruner, Jerome, *Minding the Law* (2000)
- Ang, I, *Living Room Wars* (1996)
- Ang, I, *Watching Dallas: Soap Opera and the Melodramatic Imagination* (1985)
- Aristotle, *Ethics* (1976)
- Asimow, Michael, 'Lawyers as Fallen Idols: Whatever Happened to our Golden Image?' (1999) 20(24) *The National Law Journal* A22
- Asimow, Michael, 'Divorce in the Movies: From the Hays Code to *Kramer v Kramer*' (2000) 24 *Legal Studies Forum* 221
- Asimow, Michael, 'Law and Popular Culture: Bad Lawyers in the Movies' (2000) 24 *Nova Law Review* 533
- Asimow, Michael, 'Embodiment of Evil: Law Firms in the Movies' (2001) 48 *UCLA Law Review* 1339
- Asimow, Michael and Mader, Shannon, *Popular Culture: A Course Book* (2004)
- Asimow, Michael et al, 'Perceptions of Lawyers - a Transnational Study of Student Views on the Image of Law and Lawyers' (2005) 12(3) *International Journal of the Legal Profession* 407
- Atias, Christian, 'American Legal Culture and Traditional Scholarly Order' (1986) 46 *Louisiana Law Review* 1117
- Australian Law Reform Commission, 'Rethinking Legal Education and Training' (ALRC Issues Paper 21, Australian Government, 1997)
- Baldwin, E et al, *Introducing Cultural Studies* (1998)
- Bander, E, 'The Lawyer as Devils Advocate' in D Gunn (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1992) 161
- Barker, Chris and Andre, Julie, 'Did you see? Soaps, teenage talks and gendered identity' (1996) 4:4(November) *Young* 21
- Barker, Chris, 'Television and the Reflexive Project of the Self: Soaps, Teenage Talk and Hybrid Identities' (1997) 48(4) *British Journal of Sociology* 611
- Barker, Chris, "'Cindy's a Slut": Moral Identities and Moral Responsibility in the "Soap Talk" of British Asian girls' (1998) 32(1) *Sociology* 65
- Barker, Chris, *Cultural Studies: Theory and Practice* (2000)

- Barker, Chris and Galasinski, Dariusz, *Cultural Studies and Discourse Analysis: a Dialogue on Language and Identity* (2001)
- Barker, Chris, *Making Sense of Cultural Studies* (2002)
- Barker, Chris, *The Sage Dictionary of Cultural Studies* (2004)
- Baron, Jane B and Epstein, Julia, 'Is Law Narrative?' (1997) 45 *Buffalo Law Review* 141
- Baron, Jane B and Greenstein, Richards K, 'Constructing the Field of Professional Responsibility' (2001) 15 *Notre Dame Journal of Law, Ethics and Public Policy* 37
- Baudrillard, J, *Simulations* (1983)
- Bereday, George Z F, 'Values, Education and the Law' (1977) 48 *Mississippi Law Journal* 585
- Berets, R, 'Changing Images of Justice in American Films' (1996) 20 *Legal Studies Forum* 473
- Berets, R, 'Lawyers in Film: 1996' (1998) 22 *Legal Studies Forum* 99
- Berg, Bruce L, *Qualitative Research Methods for the Social Sciences* (2001)
- Bergman, Paul, 'The Movie Lawyers' Guide to Redemptive Legal Practice' (2001) 48(6) *UCLA Law Review* 1393
- Bergman, Paul and Asimow, Michael, *Reel Justice: the Courtroom goes to the Movies* (1996)
- Black, D, *Law in Film: Resonance and Representation* (1999)
- Bodley, John H, *An Anthropological Perspective from Cultural Anthropology: Tribes, States and the Global System* (1994)
- Bottomley, Stephen, Gunningham, Neil and Parker, Stephen, *Law in Context* (1991)
- Brooks, J P, 'Will Boys just be Boyz 'N the Hood? African American Directors Portray a Crumbling Justice System in Urban America' (1997) 22 *Oklahoma City University Law Review* 1
- Brooks, Peter and Gerwitz, Paul (eds), *Law's Stories: Narrative and Rhetoric in the Law* (1996)
- Browne, R, 'Why Should Lawyers Study Popular Culture?' in D Gunn (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1992) 21
- Bryant and Zillman (eds), *Media Effects: Advances in Theory and Research* (2002)
- Butleritchie, David T, 'Situating "Thinking Like a Lawyer" within Legal Pedagogy' (2002) 50 *Cleveland State Law Review* 29
- Camilleri, Marijane, 'Lessons in law and literature: A look at the Movement and a Peer at her Jury' (1990) 39 *Catholic University Law Review* 557
- Caplow, S, 'Still in the Dark: Disappointing Images of Women' (1999) 20(2/3) *Women's Rights Law Reporter* 55
- Cassels, Jamie and Maloney, Maureen, 'Critical Legal Education: Paralysis with a Purpose' (1989) 4 *Canadian Journal of Law and Society* 99
- Castles, Margaret, 'Challenges to the Academy: Reflections on the Teaching of Legal Ethics in Australia' (2001) 12(1 & 2) *Legal Education Review* 82
- Chase, Anthony, 'Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys' (1986) 11(2) *American Bar Foundation Research Journal* 281
- Chase, Anthony, 'Toward a Legal Theory of Popular Culture' (1986) 1986 *Wisconsin Law Review* 527
- Chase, Anthony, 'On Teaching Law and Popular Culture' (1988) 3(2) *Focus on Law Studies: Teaching about Law in the Liberal Arts* 1

- Chase, Anthony, *Movies on Trial* (2002)
- Clifford, J and Marcus, G (eds), *Writing Culture* (1986)
- Clifford, Robert A, 'The Impact of Popular Culture on The Perception of Lawyers' (2001) 28(Fall) *Litigation* 1
- Clover, C, 'Law and the Order of Popular Culture' in A Sarat and T Kearns (eds), *Law in the Domains of Culture* (1998) 97
- Condlin, Robert J, 'Learning from Colleagues: a Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education' (1997) 3 *Clinical Law Review* 337
- Cook, Nancy L, 'Symposium on Law, Literature and the Humanities: Outside the Tradition: Literature as Legal Scholarship: The Call to Stories: Speaking in and About Stories' (1994) 63 *University of Cincinnati Law Review* 95
- Coombe, R, 'Contingent Articulations: A Critical Cultural Studies of Law' in A Sarat and T Kearns (eds), *Law in the Domains of Culture* (1998) 21
- Corcos, Christine Alice, 'Portia and Her Partners in Popular Culture: A Bibliography' (1998) 22 *Legal Studies Forum* 269
- Corcos, Christine Alice, 'Women Lawyers' in Robert M Jarvis and Paul R Joseph (eds), *Prime Time Law: Fictional Television as Legal Narrative* (1998) 219
- Cotterell, Roger, 'The Concept of Legal Culture' in David Nelken (ed), *Comparing Legal Cultures* (1997)
- Cover, Robert M, 'Nomos and Narrative' (1983) 97 *Harvard Law Review* 4
- Cramton, R, 'The Ordinary Religion of the Law School Classroom' (1978) 29 *Journal of Legal Education* 247
- Cranston, Ross (ed), *Legal Ethics and Professional Responsibility* (1995)
- Cripe, Kelly L, 'Empowering the Audience: Television's Role in the Diminishing Respect for the American Judicial System' (1999) 6 *UCLA Entertainment Law Review* 235
- Danaher, Geoff, Schirato, Tony and Webb, Jen, *Understanding Foucault* (2000)
- Davis, Joshua P, 'Teaching Values: The Center for Applied Legal Ethics' (2001-2002) 36 *University of San Francisco Law Review* 593
- Denscombe, Martyn, *The Good Research Guide for Small-scale Research Projects* (1998)
- Denver, John (ed), *Legal Reelism: Movies as Legal Texts* (1996)
- Denver, John, 'Law, Lawyers, Film and Television' (2000) 24 *Legal Studies Forum* 279
- Denzin, N, *Collecting and Interpreting Qualitative Materials* (1998)
- Denzin, N and Lincoln, Y S, *The Landscape of Qualitative Research* (1998)
- Dickinson, G M, 'Moral Development Theory and Clinical Legal Education: The Development of Professional Identity' (1984) 22 *University of Western Ontario Law Review* 183
- Dickson, Judith, 'Teaching about Justice as well as Law' (2003) 28(1) *Alternative Law Journal* 18
- Dominguez, David, 'Redemptive Lawyering: The First (and Missing) Half of Legal Education and Law Practice' (2000) 37 *California Western Law Review* 27
- Domnarski, William, 'Law and Literature' (2003) 27(1) *Legal Studies Forum* 109
- Dorocak, John R and Purvis, S E C, 'Using Fiction in Courses: Why Not Admit It?' (2004) 16 *Cardozo Studies in Law and Literature* 65
- Du Gay, Paul et al, *Doing Cultural Studies: The Story of the Sony Walkman* (1997)

- Dunlop, C R B, 'Literature Studies in Law Schools' (1991) 3 *Cardozo Studies in Law and Literature* 63
- Durfee, Edgar Noble, 'Broadening Legal Education' (1932-1933) 31 *Michigan Law Review* 206
- Economides, Kim, 'Learning the Law of Lawyering' (1999) 52 *Current Legal Problems* 392
- Economides, Kim and Webb, Julian, 'Do Law Schools Care about Law Students and Legal Values?' (2000) 3(1) *Legal Ethics* 1
- Eisgruber, Christopher L, 'Can Law Schools Teach Values?' (2001-2002) 36 *University of San Francisco Law Review* 603
- Elkins, James R, 'Becoming a Lawyer: The Transformation of Self During Legal Education' (1983) 66 *Soundings* 450
- Elkins, James R, 'On the Emergence of Narrative Jurisprudence: The Humanistic Perspective Finds a New Path' (1985) 9(2) *Legal Studies Forum* 123
- Elkins, James R, 'Writing our Lives: Making Introspective Writing a Part of Legal Education' (1993) 29 *Willamette Law Review* 345
- Elkins, James R, 'Troubled Beginnings: Reflections on Becoming a Lawyer' (1996) 26(4) *University of Memphis Law Review* 1303
- Elkins, James R, 'The Reconstruction of Legal Ethics as Ethics (Review Essay)' (1986) 36 *Journal of Legal Education* 274
- Elkins, James R, 'Rhetoric, Disciplines, and Stories: How Will We Know When We Have Too Much Law?' (1998) 22(1/2/3) *Legal Studies Forum* 519
- Elkins, James R, 'The Things They Carry into Legal Writing (and Legal Education)' (1998) 22(4) *Legal Studies Forum* 749
- Elkins, James R, 'The Quest for Meaning: Narrative Accounts of Legal Education' (1988) 38 *Journal of Legal Education* 577
- Elkins, James R, 'Lawyer Ethics: A Pedagogical Mosaic' (2000) 14 *Notre Dame Journal of Law, Ethics & Public Policy* 117
- Elkins, James R, 'A Law Culture Diagnostic' (2001) 8(1) *Journal of Criminal Justice and Popular Culture* 48
- Elkins, James R, 'Reading/Teaching Lawyer Films' (2004) 28 *Vermont Law Review* 813
- Engel, David M and Yngvesson, Barbara, 'Mapping Difficult Terrain: "Legal Culture," "Legal Consciousness," and Other Hazards for the Intrepid Explorer' (1984) 6(3) *Law and Policy* 299
- Epstein, Michael M, 'The Public Prosecutor as Representational Image: For and Against the People: Television's Prosecutor Image and the Cultural Power of the Legal Profession' (2003) 34 *University of Toledo Law Review* 817
- Epstein, Michael M, 'Law in Film/Film in Law: Introduction' (2004) 28(4) *Vermont Law Review* 797
- Evans, Adrian, 'Lawyers' Perceptions of Their Values: an Empirical Assessment of Monash University Law Graduates in Law 1980-1998' (2001) 12(1 & 2) *Legal Education Review* 209
- Feinman, Jay M, 'The Failure of Legal Education and the Promise of Critical Legal Studies' (1984-1985) 6 *Cardozo Law Review* 739
- Feinman, Jay M, 'The Future History of Legal Education' (1997-1998) 29 *Rutgers Law Journal* 475
- Fish, Stanley, *Is There a Text in This Class?* (1980)

- Fish, Stanley, *There's No Such Thing as a Free Speech: And it's a Good Thing, Too* (1994)
- Fiske, J, *Television Culture* (1987)
- Fiske, J, 'British Cultural Studies and Television' in J Storey (ed), *What is Cultural Studies? A Reader* (1996) 115
- Foster, James C, 'Legal Education and the Production of Lawyers to (Re)Produce Liberal Capitalism' (1985) 9 *Legal Studies Forum* 179
- Foucault, Michel, *The Archaeology of Knowledge* (1972)
- Foucault, Michel, *The Care of the Self: The History of Sexuality Vol 3* (1986)
- Frankena, W K, *Ethics* (1963)
- Friedman, Lawrence M, 'The Concept of Legal Culture: A Reply' in David Nelken (ed), *Comparing Legal Cultures* (1997)
- Friedman, Lawrence M, 'Is There a Modern Legal Culture' (1994) 7 *Ratio Juris* 117
- Friedman, Lawrence M, 'Law, Lawyers, and Popular Culture' (1989) 98 *Yale Law Journal* 1579
- Friedman, Lawrence M, 'Lexitainment: Legal Process as Theater' (2000) 50 *DePaul Law Review* 539
- Friedman, Lawrence M, *Republic of Choice: law authority and culture* (1990)
- Friedman, Lawrence M, *Total Justice* (1985)
- Friedman, Lawrence M, 'Two Faces of Law' (1984) *Wisconsin Law Review* 13
- Gadamer, H, *Philosophical Hermeneutics* (1977)
- Galanter, Marc, 'The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse' (1998) 66 *University of Cincinnati Law Review* 805
- Geertz, Clifford, *The Interpretation of Cultures: Selected Essays* (1973)
- Geertz, Clifford, *Local Knowledge: Further Essays in Interpretive Anthropology* (1983)
- Geraghty, *Women In Soap* (1991)
- Giddens, Anthony, *Modernity and Self-Identity* (1991)
- Giles, Judy and Middleton, Tim, *Studying Culture: A Practical Introduction* (1999)
- Gillers, Stephen, 'Popular Legal Culture: Taking LA Law More Seriously' (1989) 98 *Yale Law Journal* 1607
- Glaser and Strauss, *The Discovery of Grounded Theory* (1967)
- Glass, Diana M, 'Portia in Primetime: Women Lawyers, Television and LA Law' (1990) 2 *Yale Journal of Law and Feminism* 371
- Glater, Jonathan D, 'Women Are Close to Being Majority of Law Students', *New York Times* (New York), 26 March 2001
- Glendhill, C, 'Genre & Gender: Case of Soap Opera' in S Hall (ed), *Representation: Cultural Representations and Signifying Practices* (1997)
- Goldsmith, Andrew, 'Warning: Law School Can Endanger Your Health!' (1995) 21(2) *Monash University Law Review* 272
- Graham, Lorie M, 'Aristotle's Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Legal Education' (1995/1996) 20 *The Journal of the Legal Profession* 5
- Granfield, Robert, *Making Elite Lawyers: Visions of Law at Harvard and Beyond* (1992)
- Grant, J, 'Prime Time Crime: Television Portrays of Law Enforcement' (1992) 15(1) *Journal of American Culture* 57

- Greenfield, Steve and Osborn, Guy, 'The Empowerment of Students: The Case for Popular Film in Legal Studies' (1995) 10(2) *Focus on Legal Studies* 6
- Greenfield, Steve and Osborn, Guy, 'When Cultures Collide: The Characterization of Law and Lawyers in Film' (1995) 23 *International Journal of the Sociology of Law* 107
- Greenfield, Steve, Osborn, Guy and Robson, Peter, *Film and The Law* (2001)
- Greenfield, Steve, 'Hero or Villain? Cinematic lawyers and the delivery of justice' (2001) 28(1) *Journal of Law and Society* 25
- Greenfield, T, *Research Methods: Guidance for Post-Graduates* (1996)
- Gunn, David L (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1993)
- Hall, S, 'Encoding/Decoding' in S Hall et al (eds), *Culture, Media, Language* (1981)
- Hall, S (ed), *Representation: Cultural Representations and Signifying Practices* (1997)
- Hall, Timothy L, 'Moral Character, the Practice of Law, and Legal Education' (1990) 60 *Mississippi Law Journal* 511
- Harding, R M, 'Celluloid Death: Cinematic Depictions of Capital Punishment' (1996) 30 *University of San Francisco Law Review* 1167
- Harno, Albert J, 'Legal Education: Convictions and Perplexities' (1948-1949) 1 *Journal of Legal Education* 99
- Harris, David A, 'The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System' (1993) 35 *Arizona Law Review* 785
- Harrison, Jeffrey L and Wilson, Sarah E, 'Law and Literature: A Collection of Essays on John Grisham's *The Rainmaker*: Advocacy in Literature: Storytelling, Judicial Opinions, and the Rainmaker' (1996) 26 *University of Memphis Law Review* 1285
- Harrison, Melissa, 'A Time of 'Passionate Learning': Using Feminism, Law, and Literature to Create a Learning Community' (1993) 60 *Tennessee Law Review* 393
- Heilbrun, Carolyn and Resnick, Judith, 'Convergences: Law, Literature and Feminism' (1990) 99 *Yale Law Journal* 1913
- Henriss-Anderssen, Diana, 'Teaching Legal Ethics to First Year Law Students' (2002) 13 *Legal Education Review* 45
- Hill, Michael, *The How and Why of Love: An Introduction to Evangelical Ethics* (2002)
- Hirsham, Linda R, 'Bronte, Bloom and Bork: An Essay on the Moral Education of Judges' (1988) 137 *University of Pennsylvania Law Review* 177
- Horwitz, Morton, 'Resist Cult of Complexity, Paralyzing Skepticism' (1986) 83(1) *Harvard Law Rec* 6
- Howarth, Joan W, 'Women Defenders on Television: Representing Suspects and the Racial Politics of Retribution' (2000) 3 *Journal of Gender, Race and Justice* 475
- Huisman, Rosemary, 'The Relevance of Discourse Analysis to Legal Practice' (1991) 7 *Australian Journal of Law and Society* 27
- Hutchinson, A, 'Legal Ethics in a Fragmented Society: Between Professional and Personal' (1998) *International Journal of the Legal Profession* 175
- Iser, W, *The Act of Reading: A Theory of Aesthetic Response* (1980)
- Jackson, Chris, 'Film and TV Legal Drama Commentary' (2000) 24 *Legal Studies Forum* 321

- Jaff, Jennifer, 'Law and Lawyer in Pop Music: A Reason for Self-Reflection' (1985-1986) 40 *University of Miami Law Review* 659
- Jakobson, Roman, 'Linguistics and Poetics' in Richard T De George and Fernande M De George (eds), *The Structuralists: From Marx to Levi-Strauss* (1972)
- Jarvis, Robert M and Joseph, Paul R (eds), *Prime Time Law: Fictional Television as Legal Narrative* (1998)
- Jarvis, Robert M, 'Situation Comedies' in Robert M Jarvis and Paul R Joseph (eds), *Prime Time Law: Fictional Television as Legal Narrative* (1998) 167
- Johnstone, Richard and Vignaendra, Sumitra, 'Learning Outcomes and Curriculum Development in Law' (A report commissioned by the Australian Universities Teaching Committee (AUTC), 2003)
- Jordan, Glenn and Weedon, Chris, *Cultural Politics: Class, Gender, Race and the Postmodern World* (1995)
- Joseph, Paul R, 'A course whose time has come' (1997) 22(3) *Alternative Law Journal* 111
- Joseph, Paul R, 'Law and Popular Culture: Introduction' (2000) 24(Winter) *Nova Law Review* 527
- Joseph, Paul R and Jarvis, Robert M, *Prime Time Law: Fictional Television as Legal Narrative* (1998)
- Kamler, B and Maclean, R, "'You Can't Just Go To Court and Move Your Body": First-Year Students Learn to Write and Speak The Law' (1996) 3 *Law, Text, Culture* 176
- Kandel, Randy Frances, 'Whither the Legal Whale: Interdisciplinarity and the Socialization of Professional Identity' (1993) 27 *Loyola of Los Angeles Law Review* 9
- Katsh, E, 'Is Television Anti-Law? An Inquiry into the Relationship between Law and Media' (1983) VII(1) *ALSA Forum* 26
- Katzman, J, 'Perception v Reality: the Lawyer in Popular Culture' (1992) 55 *Texas Bar Journal* 116
- Keetley, Dawn, 'Law and Order' in Robert M Jarvis and Paul R Joseph (eds), *Prime Time Law: Fictional Television as Legal Narrative* (1998) 33
- Kidd, Warren, *Culture and Identity* (2002)
- Kirby, the Hon Justice Michael, 'Legal Professional Ethics in Times of Change' (Paper presented at the St James Ethics Centre Forum on Ethical Issues, Sydney, 23 July 1996)
- Kissam, Philip C, 'Disturbing Images: Literature in a Jurisprudence Course' (1998) 22(1/2/3) *Legal Studies Forum* 329
- Kitei, Brett, 'The Mass Appeal of the Practice and Ally McBeal: An In-Depth Analysis of the Impact of These Television Shows on the Public's Perception of Attorneys' (1999) 7 *UCLA Entertainment Law Review* 169
- Klein, Chris, 'Legal Reelism - Is Learning Law and Ethics from Flicks a Farce?' (1997) *The National Law Journal*
- Krieger, Lawrence S, 'What We're Not Telling Law Students – and Lawyers – That They Really Need to Know: Some Thoughts-in-action Toward Revitalising the Profession From its Roots' (1998) 13(1) *Journal of Law and Health* 1
- Krieger, Lawrence S, 'Institutional Denial About the Dark Side of Law School and Fresh Empirical Guidance for Constructively Breaking the Silence' (2002) 52(1 & 2) *Journal of Legal Education* 112

- Krieger, Lawrence S and Sheldon, K, 'Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22 *Behavioral Sciences and the Law* 261
- Laster, Kathy, *Law as Culture* (1997)
- Le Brun, M, 'Enhancing Student Learning of Legal Ethics and Professional Responsibility in Australian Law Schools by Improving our Teaching' (2001) 12(1 & 2) *Legal Education Review* 269
- Lenz, Timothy O, *Changing Images of Law in Film and Television Crime Stories* (2003)
- Leonard, Jerry, *Legal Studies as Cultural Studies: A Reader in (Post)Modern Critical Theory* (1995)
- Lesnick, Howard, 'Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum' (1990) 37 *UCLA Law Review* 1157
- Lewis, Jeff, *Cultural Studies – The Basics* (2002)
- Lichtheim, George, *The Concept of Ideology and Other Essays* (1967)
- Liebes, Tamar and Katz, Elihu, *The Export of Meaning: Cross-Cultural Readings of Dallas* (1993)
- Liebes, Tamar and Katz, Elihu, 'On the Critical Abilities of Television Viewers' in Ellen Seiter et al (ed), *Remote Control: Television Audiences and Cultural Power* (1989)
- Livingstone, S, *Making Sense of Television: the Psychology of Audience Interpretation* (2nd ed, 1998)
- Luban, D and Millemann, M, 'Good Judgment: Ethics Teaching in Dark Times' (1995) 9 *Georgetown Journal of Legal Ethics* 31
- Lurvey, I and Eiseman, S, 'Divorce goes to the movies' (1996) 30 *University of San Francisco Law Review* 1209
- Macaulay, Stewart, 'Popular Legal Culture: An Introduction' (1989) 98 *Yale Law Journal* 1545
- Machura, Stefan and Robson, Peter (eds), *Law and Film* (2001)
- Macintyre, Alasdair, 'Book Review: Contingency, Irony and Solidarity' (1990) 87 *The Journal of Philosophy* 708
- Malloy, Robin Paul, 'Symposium on the Images of Law(yers) in Popular Culture: Introduction' (2003) 53 *Syracuse Law Review* 1161
- Manderson, Desmond and Caudill, David, 'Modes of Law: Music and Legal Theory, An Interdisciplinary Workshop' (1999) 20 *Cardozo Law Review* 1325
- Manderson, Desmond, *Songs Without Music: Aesthetic Dimensions of Law and Justice* (2000)
- Manderson, Desmond, 'From Hunger to Love: Myths of the Source, Interpretation, and Constitution of Law in Children's Literature' (2003) 15(1) *Law and Literature* 87
- Marek, J, 'The Practice and Ally McBeal: a New Image for Women Lawyers on Television?' (1999) 22(1) *Journal of American Culture* 77
- Margulies, Peter, 'Legal Education: Re-Framing Empathy in Clinical Legal Education' (1999) 5(Spring) *Clinical Law Review* 605
- Marshall, Anna-Maria and Barclay, Scott, 'In Their Own Words: How Ordinary People Construct the Legal World' (2003) 28(3) *Law and Social Inquiry* 617
- Marshall, C and Rossman, G B, *Designing Qualitative Research* (3rd ed, 1999)
- Mason, J, *Qualitative Researching* (1996)

- Mastrangelo, P, 'Lawyers and the Law: A Television Filmography' (1988) 8(3/4) *Legal Reference Services Quarterly* 135
- Matasar, Richard A, 'Legal Education: Skills and Values Education: Debate About the Continuum Continues' (2003) 22 *New York Law School Journal of International and Comparative Law* 25
- Maunter, Thomas, *The Penguin Dictionary of Philosophy* (1997)
- McCloud, B, "'Much law but little justice': art imitates life in *The Practice*" (1998) 13(6) *World and I* 106
- McGuigan, J, *Cultural Methodologies* (1997)
- McKie, D and Walker, S, 'Learning Law from LA' (1997) 22(3) *Alternative Law Journal* 114
- McKinly, E, *Beverly Hills 90210: Television, Gender and Identity* (1997)
- Menkel-Meadow, Carrie, 'Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics' (2000) 69(3) *Fordham Law Review* 787
- Meroney, D, 'Who Loves Lawyers?' (1998) 9(3) *The American Enterprise* 78
- Mersky, Roy M, 'Law and Popular Culture: Law and Popular Culture in the Film Collection at the Tarlton Law Library' (1998) 22 *Legal Studies Forum* 109
- Meyer, D and Hoynes, W, 'Shannon's Deal: Competing Images of the Legal system on Primetime Television' (1994) 27 *Journal of Popular Culture* 31
- Meyer, Philip N, 'Convicts, Criminals, Prisoners and Outlaws: A Course in Popular Storytelling' (1992) 42 *Journal of Legal Education* 129
- Meyer, Philip N, 'Law Students Go to the Movies' (1992) 24 *Connecticut Law Review* 893
- Meyer, Philip N, 'Visual Literacy and the Legal Culture: Reading Film As Text in the Law School Setting' (1993) 17 *Legal Studies Forum* 73
- Meyer, Philip N, 'Desperate for Love: Cinematic Influences Upon a Defendant's Closing Argument to a Jury' (1994) 18 *Vermont Law Review* 721
- Meyer, Philip N, 'Desperate for Love II: Further Reflections on the Interpenetration of Legal and Popular Storytelling in Closing Arguments to a Jury in a Complex Criminal Case' (1996) 30 *University of San Francisco Law Review* 931
- Meyer, Philip N, 'Desperate for Love III: Rethinking Closing Arguments as Stories' (1999) 50 *South Carolina Law Review* 715
- Meyer, Philip N, 'Why a Jury Trial is More Like a Film Than a Novel' (2001) 28 *Journal of Law and Society* 133
- Meyer, Philip N, 'Using Non-Fiction Films as Visual Texts in the First Year Criminal Law Course' (2004) 25 *Vermont Law Review* 895
- Miller, C, "'What a Waste Beautiful Sexy Gal, Hell of a Lawyer": Film and the Female Attorney' (1994) 4 *Columbia Journal of Gender and Law* 203
- Miller, D, 'The Consumption of Soap Opera: *The Young and the Restless* and Mass Consumption in Trinidad' in R Allen (ed), *To Be Continued... Soap Opera Around the World* (1995)
- Miller, Toby, 'Approach to the Cultural Study of Law: What It Is and What It Isn't: Cultural Studies Meets Graduate-Student Labor' (2001) 13 *Yale Journal of Law and Humanities* 69
- Mixon, John and Schuwerk, Robert P, 'The Personal Dimension of Professional Responsibility' (1995) (Summer/Autumn) *Law & Contemporary Problems* 87
- Moliterno, James E, 'Experience and Legal Ethics Teaching' (2001) 12(1 & 2) *Legal Education Review* 3
- Moran, Leslie J et al (eds), *Law's Moving Image* (2004)

- Morgan, D L, *Focus Groups and Qualitative Research* (1988)
- Morley, D, *Television, Audiences and Cultural Studies* (1992)
- Myrsiades, Linda, 'Legal Studies as Cultural Studies: A Reader in (Post)modern Critical Theory (Book review)' (1996) 23(1) *College Literature* 204
- Nelken, David (ed), *Comparing Legal Cultures* (1997)
- Nevins, Francis M, 'Using Fiction and Film As Law School Tools' in Donald B King (ed), *Legal Education for the 21st Century* (1999) 177
- Newcomb, H, 'Doctors and Lawyers' in H Newcomb (ed), *TV: The Most Popular Art* (1974) 110
- Newcomb, H, 'The Lawyer in the History of American Television - an Overview' in D Gunn (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1992) 39
- O'Shea, Paul, 'The Complete Law School: Avoiding the production of "half-lawyers"' (2004) 29(6) *Alternative Law Journal* 272
- Osborn, Guy, 'Borders and Boundaries: Locating the Law in Film' (2001) 28(1) *Journal of Law and Society* 164
- Osborn Jr, John Jay, 'UFOs in the Law School Curriculum: The Popularity and Value of Law and Literature Courses' (1990) 14(1) *Legal Studies Forum* 53
- Overton, T, 'Lawyers, Lightbulbs and Dead Snakes: The Lawyer Joke as Societal Text' (1995) 42 *UCLA Law Review* 1069
- Owens, J, 'Grisham's Legal Tales: A Moral Compass for the Young Lawyer' (2001) 48 *UCLA Law Review* 1431
- Papke, David Ray, 'Law in American Culture: An Overview' (1992) 15(1) *Journal of American Culture* 3
- Papke, David Ray, 'The American Courtroom Trial: Pop Culture, Courthouse Realities, and the Dream World of Justice' (1999) 40 *South Texas Law Review* 919
- Papke, David Ray, 'Conventional Wisdom: The Courtroom Trial in American Popular Culture' (1999) 82 *Marquette Law Review* 471
- Papke, David Ray, 'How does the Law Look in the Movies? Anthony Chase, *Movies on Trial: The Legal System on the Silver Screen* (Book Review)' (2003) 27 *The Legal Studies Forum* 439
- Parker, C, 'What Do They Learn When They Learn Legal Ethics?' (2001) 12(1 & 2) *Legal Education Review* 175
- Pearce, Russell G, 'Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School' (1998) 29 *Loyola University Chicago Law Journal* 719
- Pike, James, *Beyond the Law: The Religious and Ethical Meaning of the Lawyer's Vocation* (1963)
- Podlas, Kimberlianne, 'As Seen On TV: The Normative Influence of Syndi-Court On Contemporary American Litigiousness' (2004) 11 *Villanova Sports & Entertainment Law Journal* 1
- Podlas, Kimberlianne, 'The Tale That Television Tells ' (Paper presented at the Power of Stories: Intersections of Law, Culture and Literature, Gloucester, UK, 2005)
- Pommersheim, Frank, 'Voice, Values, and Community: Some Reflections on Legal Writing' (1988) 12(4) *Legal Studies Forum* 477
- Posner, Richard A, *Law and Literature: A Misunderstood Relation* (1988)
- Post, *Law and the Order of Popular Culture* (1991)

- Rabouin, E Michelle, 'Walking the Truth: Transforming Law Students into Ethical Transactional Lawyers' (1996) 9 *DePaul Business Law Journal* 1
- Rafter, Nicole, 'American Criminal Trial Films: An Overview of Their Development, 1930-2000' (2001) 28(1) *Journal of Law and Society* 9
- Rapoport, Nancy B, 'Dressed for Excess: How Hollywood Affects the Professional Behaviour of Lawyers' (2000) 14 *Notre Dame Journal of Law, Ethics and Public Policy* 49
- Rapping, E, 'Land of good-guy prosecutors' (1996) 60(5) *The Progressive* 38
- Rapping, E, 'The Return of the Attorney-hero: Justice and Ideology on *Law and Order* and *The Practice*' (2000) 21 *Studies in Law, Politics and Society* 189
- Rapping, E, *Law and Justice as Seen on TV* (2003)
- Redhead, S, *Unpopular Culture: the Birth of Law and Popular Culture* (1995)
- Rhode, D, 'If Integrity is the Answer, What is the Question?' (2003) 72 *Fordham Law Review* 333
- Rhode, D, *Professional Responsibility: Ethics by the Pervasive Method* (2nd ed, 1998)
- Richards, David A J, 'Moral Theory, The Development Psychology of Ethical Autonomy and Professionalism' (1981) 31 *Journal of Legal Education* 359
- Richmond, Michael L, 'Law, Instrumental Music, and Dance: Reflections of a Common Culture' (2003) 27 *The Legal Studies Forum* 783
- Ricoeur, P, *Time and Narrative* (1986)
- Robertson, Michael, 'Renewing a Focus on Ethics in Legal Education?' (Paper presented at the Australian Lawyers and Social Change, Canberra, 2004)
- Rorty, Richard, *Contingency, Irony and Solidarity* (1989)
- Rosen, R E, 'Ethical Soap: *LA Law* and the Priveleging of Character' (1989) 43 *University of Miami Law Review* 1229
- Rosenberg, C, 'An LA Lawyer Replies' (1989) 98 *Yale Law Journal* 1625
- Ross, S, 'Lawyers' ethics in TV serials' (1999) 73 *Law Institute Journal* 22
- Ross, Ysaiah, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (3rd ed, 2001)
- Rostron, Allen K, 'Lawyers, Law and the Movies: The Hitchcock Cases' (1998) 86 *California Law Review* 211
- Rotunda, Ronald D, 'The Legal Profession and the Public Image of Lawyers' (1998/1999) 23 *The Journal of the Legal Profession* 51
- Salzmann, Victoria S and Dunwoody, Philip T, 'Prime-Time Lies: Do Portrayals of Lawyers Influence How People Think About the Legal Profession?' (2005) 58 *Southern Methodist University Law Review* 411
- Sarantakos, S, *Social Research* (1998)
- Sarat, A, 'Exploring the Hidden Domains of Civil Justice: "Naming, Blaming and Claiming" in Popular Culture' (2000) 40 *DePaul Law Review* 425
- Sarat, A and Kearns, T, 'The Cultural Lives of Law' in A Sarat and T Kearns (eds), *Law and the Domains of Culture* (1998) 1
- Sarat, A and Kearns, T, *Law in the Domains of Culture* (1998)
- Sarat, A and S, Scheingold (eds), *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998)
- Schaffer, Thomas L, *American Legal Ethics: Text, Readings, and Discussion Topics* (1985)
- Schaller, B, *A Vision of American Law: Judging Law, Literature and the Stories We Tell* (1997)

- Schiltz, Patrick J, 'On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871
- Scotoline, Lisa, 'Law and Popular Culture: Get Off the Screen' (2000) 24 *Nova Law Review* 655
- Seiter, E, 'Semiotics, Structuralism and Television' in R Allen (ed), *Channels of Discourse Reassembled: television and contemporary criticism* (1992)
- Selby, K and Cowdery, R, *How to Study Television* (1998)
- Shaffer, T, 'Christian Lawyer Stories and American Legal Ethics' (1982) 33 *Mercer Law Review* 877
- Shanahan, J and Morgan, M, *Television and Its Viewers: Cultivation Research Theory* (1999)
- Shapiro, C, 'Women Lawyers in Celluloid, Rewrapped' (1998) 23 *Vermont Law Review* 303
- Shapiro, C, 'Women Lawyers in Celluloid: Why Hollywood Skirts the Truth' (1995) 25 *University of Toledo Law Review* 955
- Sharp, Cassandra, 'Scarlet Letter or Chastity Belt? What Legal Dramas of the Twenty-first Century are "Telling" Law Students About a Career in Law' (2002) 5(1) *Legal Ethics* 90
- Sharp, Cassandra, 'Changing the Channel: What to Do with the Critical Abilities of Law Students as Viewers?' (2004) 13(2) *Griffith Law Review* 185
- Sharp, Cassandra, 'The "Extreme Makeover" Effect of Law School: Students Being Transformed by Stories' (2005) 12 *Texas Wesleyan Law Review* 233
- Sherwin, Richard, 'The Narrative Construction of Legal Reality' (1994) 18 *Vermont Law Review* 681
- Sherwin, Richard, 'Picturing Justice: Images of Law and Lawyers in the Visual Media' (1996) 30 *University of San Francisco Law Review* 891
- Sherwin, Richard, 'Cape Fear: Law's inversion and cathartic justice' (1996) 30 *University of San Francisco Law Review* 1023
- Sherwin, Richard, *When The Law goes Pop: The Vanishing Line Between Law and Popular Culture* (2000)
- Sherwin, Richard, 'When Law Goes Pop' (2002) 27 *Law and Social Inquiry* 139
- Shrum, L J, 'Crime and Popular Culture: facts of television portrayals of crime and violence on viewers' perceptions of reality: a psychological process persective' (1998) 22 *The Legal Studies Forum* 257
- Silbey, Jessica M, 'Patterns of Courtroom Justice' (2001) 28(1) *Journal of Law and Society* 97
- Silbey, Jessica M, 'What We Do When We Do Law and Popular Culture: Richard Sherwin When Law Goes Pop ' (2002) 27 *Law and Social Inquiry* 139
- Silverstone, R, *Television and Everyday Life* (1994)
- Simon, W, 'Should Lawyers Obey the Law?' (1996) 38 *William and Mary Law Review* 217
- Simon, W, 'Moral Pluck: Legal Ethics in Popular Culture' (2001) 101 *Columbia Law Review* 421
- Spitz, David M, 'Heroes or Villains? Moral Struggles v Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers and the Legal Profession in Popular Culture' (2000) 24 *Nova Law Review* 725
- Stachenfeld, Avi J and Nicholson, Christopher M, 'Blurred Boundaries: An Analysis of the Close Relationship Between Popular Culture and the Practice of Law' (1996) 30 *University of San Francisco Law Review* 903

- Stone, Alan A, 'Teaching Film at Harvard Law School' (2000) 24(3 & 4) *Legal Studies Forum* 573
- Storey, John, *An Introductory Guide to Cultural Theory and Popular Culture* (1993)
- Storey, John (ed), *What is Cultural Studies? A Reader* (1996)
- Stover, Robert V, *Making It and Breaking It: The Fate of Public Interest Commitment during Law School* (1989)
- Strickland, Rennard, 'The Cinematic Lawyer: The Magic Mirror and the Silver Screen' (1997) 22(1) *Oklahoma City University Law Review* 13
- Strinati, D, *An Introduction to Theories of Popular Culture* (1995)
- Tappan, Mark B and Brown, Lyn Mikel, 'Stories Told and Lessons Learned: Toward a Narrative Approach to Moral Development and Moral Education' (1989) 59(2) *Harvard Educational Review* 182
- Thielens, Wagner P, 'The Influence of the Law School Experience on the Professional Ethics of Law Students' (1969) 21 *Journal of Legal Education* 587
- Thomas, J, 'Legal Culture and *The Practice*: A Post-modern Depiction of the Rule of Law' (2001) 48 *UCLA Law Review* 1495
- Thornton, Margaret, 'Portia Lost in the Groves of Academe Wondering What to do about Legal Education' (1991) 9(2) *Law in Context* 9
- Thornton, Margaret, *Romancing the Tomes: Popular Culture, Law and Feminism* (2002)
- Tomasic, Roman, *Lawyers and the Community* (1978)
- Twining, William, *Blackstone's Tower: The England Law School*, The Hamlyn Lectures Forty Sixth Series (1994)
- Uelman, Gerald F, 'The Trial as a Circus: Inherit the Wind' (1996) 30 *University of San Francisco Law Review* 1221
- Ward, Ian, 'The Educative Ambition of Law and Literature' (1993) 13 *Legal Studies* 323
- Watson, Jay, 'Law and Literature: Possibilities and Perspectives' (1997) 26(4) *CLIO* 514
- Webb, D, 'Ethics as a Compulsory Element of Qualifying Degrees: Some Modest Expectations' (2001) 4(2) *Legal Ethics* 109
- Webb, Julian, 'Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education' (1998) 25 *Journal of Law and Society* 134
- Webb, Julian, 'Being a Lawyer/Being a Human Being' (2002) 5 *Legal Ethics* 130
- Weisberg, Richard H, *The Failure of the Word: The Protagonist as Lawyer in Modern Fiction* (1984)
- Weisberg, Richard H, *When Words Lose Their Meaning* (1987)
- Weisberg, Richard H, 'Coming of Age Some More: "Law and Literature" Beyond the Cradle' (1988) 13 *Nova Law Review* 107
- Weisberg, Richard H, 'Three Lessons from Law and Literature' (1993) 27 *Loyola of Los Angeles Law Review* 285
- Weisbrot, David, *Australian Lawyers* (1990)
- Weiss, E, 'Who's Missing in This Picture? Why Movies and Television have Ignored Women Lawyers' (1989) 16 *Barrister* 4
- Western, J S and Anderson, D S, 'Education and Professional Socialisation' (1968) 4 *Australian and New Zealand Journal of Sociology* 91
- Whaley, 'Gilbert and Sullivan at law' in D L Gunn (ed), *The Lawyer and Popular Culture: Proceedings of a Conference* (1993)

- White, James Boyd, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (1973)
- White, James Boyd, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (1985)
- White, James Boyd, *The Legal Imagination* (1985)
- White, James P, 'Legal Education in the Era of Change: Law School Autonomy' (1987) *Duke Law Journal* 292
- White, James Boyd, *Acts of Hope: Creating Authority in Literature, Law and Politics* (1994)
- Widdicombe, Sue and Wooffitt, Robin, *The Language of Youth Sub Cultures* (1995)
- Willging, Thomas E and Dunn, Thomas G, 'The Moral Development of the Law Student: Theory and Data on Legal Education' (1981) 31 *Journal of Legal Education* 306
- Williams, Raymond, *The Long Revolution* (1961)
- Williams, Raymond, *Television: Technology and Cultural Form* (1974)
- Williams, Raymond, *Culture* (1981)
- Williams, Raymond, *Keywords* (1983)
- Williams, Raymond, *Resources of Hope* (1989)
- Wilson, T, *Watching Television: Hermeneutics, Reception and Popular Culture* (1993)
- Woodward, Kathryn (ed), *Identity and Difference* (1997)
- Yngvesson, Barbara, 'Popular Legal Culture: Inventing Law in Local Settings: Rethinking Popular Legal Culture' (1989) 98 *Yale Law Journal* 1689
- Zizek, Slavoj, *Mapping Ideology* (1994)

II OTHER MATERIAL

- Australian Commonwealth Government, *Prosecution Policy of the Commonwealth* <<http://www.cdpp.gov.au>> at 4 December 2006
- Elkins, James R, *Lawyers and Film: Narrative & Storytelling* (2004) West Virginia University <<http://myweb.wvnet.edu/~jelkins/film04/story.html>> at 18 September 2005.

APPENDIX A

QUESTIONS USED IN FOCUS GROUPS AND INTERVIEWS

1. What legal shows have you seen or do you watch on television? PROBE: Why do you watch/like those ones? What do these shows do for you?
2. How often do you watch?
3. How would you describe the lawyers on television? PROBE: Qualities/Characteristics and the Work they do.
4. What characteristics do you admire in these lawyers?
5. What distinguishes a good lawyer from a bad lawyer? PROBE: Any examples from television?
6. Who is your favourite lawyer on television and why?
7. Are television lawyers the same as real lawyers? If NO: How are they different? PROBE: Are there any that you relate to? Why?
8. What conflicts or ethical dilemmas arise for television lawyers?
9. What does television tell the public about lawyers? PROBE: Is the representation on television positive or negative?
10. Why did you decide to study law?
11. How do you picture yourself as a lawyer in the future? PROBE: What are your expectations of life as a lawyer; the tasks you will perform etc; give egs.
12. What does it 'mean' to be a lawyer?

APPENDIX B

ADVERTISEMENT USED TO RECRUIT VOLUNTEERS

VOLUNTEERS WANTED

HAVE YOU SEEN ANY OF THE LEGAL SHOWS ON TELEVISION?

IF YES, THEN I AM INTERESTED IN YOU!

My research: *“The expectations of 1st year law students and the influence of representations of lawyers on television”*

I need: volunteers to take part in small focus groups or an interview with two people, which would discuss this topic. They would last no more than an hour.

Your participation would in no way be connected with your assessment or enrolment in the LLB program, and is a **one-off voluntary** attendance.

Interested? Put your *name* and *email* down on the sheet and I will contact you to arrange a time; or visit me

APPENDIX C

BASIC DEMOGRAPHIC SURVEY

Date/Time:

What is your age?

What degree are you enrolled in?

Have you done any previous uni study?

Are any of your close family and friends in the legal profession?

Have you had any experience of legal practice in any form?

APPENDIX D

PARTICIPANT INFORMATION SHEET

“The expectations of 1st year law students and the influence of representations of lawyers on television”

PARTICIPANT INFORMATION SHEET

Researcher: Cassandra Sharp, PhD Candidate, Law Faculty, University of Wollongong, Ph: _____, Email: _____

Thomson, Law Faculty, University of Wollongong, Ph: _____ Email: _____

The Law Foundation of NSW, Legal Support Scholarship Fund, generously funds this research.

What are the aims of this project?

This project aims to establish a connection between how 1st year law students view their chosen career and the influence of television representations on their expectations. By interviewing voluntary students in their 1st year, it is designed to gain some insight into the influences on the legal cultural knowledge base and the expectations of formative law students. Of significance, the project is planned to reveal the nature of influences on a law student's expectation of a lawyer's ethical standards, and indicate ways of better addressing their expectations within teaching methods and objectives.

What will my participation involve?

You will have the option to participate in either an interview or a focus group discussion, which will involve the following procedures (conducted within the Law Faculty rooms):

Interviews: Volunteers will be asked to attend an interview with Cassandra at a nominated time that will be recorded on an audiotape and could take up to 1 hour. You will be asked a series of open questions about your experiences of watching lawyers on television and expected to discuss honestly and candidly your expectations in relation to them.

Focus Groups: Volunteers will be asked to attend a focus group with a moderator (Cassandra) at 6-8 other volunteer students at a nominated time. You will be asked to discuss openly and candidly your experiences of watching lawyers on television and your expectations in relation to them, and some examples of television representations may be screened. This group discussion will be recorded on an audiotape and could take between 1-2 hours.

Are there any risks involved in this research?

Participation in this research presents few risks. However, some embarrassment may be experienced in describing personal responses in both the interviews and focus groups. Participants in focus groups must be aware that they are discussing their experiences and expectations among other students and that as these are revealed, they may suffer embarrassment if others were to disagree with their opinions.

What measures will be taken to ensure confidentiality? and How will the information from the project be collected and stored?

Interviews and focus groups will be recorded on audiotapes, transcribed and then kept in securely in a locked cabinet in my supervisor's office. Other than the consent forms (which will be kept separately) there will be no list of names, and the names of the participants will not be kept on or near the tapes. A pseudonym will be assigned to you when the data is transcribed and reported, and only the principal researchers and the transcriber will have access to the data once collected. Each member of the research team will treat your contribution as confidential. The data collected from this project will not be used in any other research projects without your permission.

In **interviews**, you are assured that information revealed will be kept confidential by Cassandra. However, the use of **focus groups** means that individual participants must understand the importance of keeping the confidence of each other member. Focus Group participants are strongly advised and encouraged to keep the contents of discussion confidential.

What's the connection between this research and my studies in the LLB program?

There is absolutely no relationship between your participation in this project and your enrolment in the LLB program. This is **voluntary** participation. You will not receive any benefits in your assessment for any LLB subject (including LLB 100) if you decide to participate, neither will you suffer any disadvantage if you decide against participation.

Can I withdraw my consent at any time? And what happens if I do?

If you agree to participate, you will be asked to give notice of your willingness to volunteer by signing a consent form. After giving consent, you still have the freedom to discontinue participation at any time, and there will be no adverse effects on you if you choose to do so.

Interviews: If you were to withdraw your consent during the process of the interview you can withdraw data concerning yourself by having the audio tape recording erased and any notes destroyed.

Focus Groups: If you are participating in the focus group and choose to withdraw your consent during the process of the group, attempts can be made to withdraw data concerning yourself from the project. Your individual contribution could not be erased from the group's audio recording without destroying the tape, however to remove your participation from the project, the transcriber would be instructed to omit your contributions from the transcription. You still should be aware that as students will not identify themselves on the recording before they speak, the transcriber can only omit your contributions through following your voice pattern, which of course does not guarantee you the ability to fully withdraw your data.

What if I have more questions?

The researcher Cassandra and her supervisor Colin would be happy to answer any questions you may have in relation to this project, or your participation in it. Please contact them via the details given above.

What I have a complaint or concern?

If you have any concerns or complaints about how this research is or has been conducted, you can contact the Complaints Officer, Human Research Ethics Committee, University of Wollongong, on

APPENDIX E

CONSENT FORMS

UNIVERSITY OF WOLLONGONG

Consent form - Interviews

EXPECTATIONS OF LAW STUDENTS AND THE INFLUENCE OF REPRESENTATIONS OF LAWYERS ON TELEVISION CASSANDRA SHARP

I have been given information about the project *Expectations Of 1st Year Law Students And The Influence Of Representations Of Lawyers On Television* and discussed the research project with Cassandra Sharp who is conducting this research as part of PhD supervised by in the Faculty of Law at the University of Wollongong.

I understand that, if I consent to participate in this project I will be asked to attend an interview with Cassandra Sharp at the nominated time (lasting not longer than one hour); and answer questions in relation to my perceptions of lawyers and the shows I watch on television.

I have been advised of the potential risks and burdens associated with this research, which includes being vulnerable to embarrassment, and have had an opportunity to ask Cassandra Sharp any questions I may have about the research and my participation. I understand that my participation in this research is voluntary, and my participation will not be identifiable in any way. I am free to refuse to participate and I am free to withdraw from the research at any time. My refusal to participate or withdrawal of consent will not affect my assessment or enrolment in my LLB degree program at the University of Wollongong in any way.

If I have any enquiries about the research, I can contact Cassandra Sharp on
or , or if I have any concerns or
complaints regarding the way the research is or has been conducted, I can contact the
Complaints Officer, Human Research Ethics Committee, University of Wollongong on
.

By signing below I am indicating my consent to participate in the research entitled *Expectations Of Law Students And The Influence Of Representations Of Lawyers On Television*, conducted by Cassandra Sharp as it has been described to me in the information sheet and in discussion with Cassandra. I understand that the data collected from my participation will be used for the purpose of completing a PhD thesis and any journal publications and conference papers that arise as a result of this research, and I consent for it to be used in that manner.

Signed

Date/...../.....

Name (please print)

UNIVERSITY OF WOLLONGONG

Consent form – Focus Group

EXPECTATIONS OF LAW STUDENTS AND THE INFLUENCE OF
REPRESENTATIONS OF LAWYERS ON TELEVISION

CASSANDRA SHARP

I have been given information about the project *Expectations Of 1st Year Law Students And The Influence Of Representations Of Lawyers On Television* and discussed the research project with Cassandra Sharp who is conducting this research as part of PhD supervised by in the Faculty of Law at the University of Wollongong.

I understand that, if I consent to participate in this project I will be asked to attend a focus group discussion with Cassandra Sharp and 6-8 other participants at the nominated time (lasting not longer than two hours); take part in discussion, facilitated by Cassandra, which relates to my perceptions of lawyers and the shows I watch on television; and keep the contributions of all group members confidential.

I have been advised of the potential risks and burdens associated with this research, which include being vulnerable to embarrassment among peers and the difficulties associated with assuring confidentiality among other members of the focus group. I have had an opportunity to ask Cassandra Sharp any questions I may have about the research and my participation.

I understand that my participation in this research is voluntary, and my participation will not be identifiable in any way. I am free to refuse to participate and I am free to withdraw from the research at any time. My refusal to participate or withdrawal of consent will not affect my assessment or enrolment in my LLB degree program at the University of Wollongong in any way. I understand that if I do withdraw during the focus group, while no data would be reported about my participation, it may be difficult to remove my contribution from the audiotape.

If I have any enquiries about the research, I can contact Cassandra Sharp on
or , or if I have any concerns or
complaints regarding the way the research is or has been conducted, I can contact the
Complaints Officer, Human Research Ethics Committee, University of Wollongong on
.

By signing below I am indicating my consent to participate in the research entitled *Expectations Of Law Students And The Influence Of Representations Of Lawyers On Television*, conducted by Cassandra Sharp as it has been described to me in the information sheet and in discussion with Cassandra. I understand that the data collected from my participation will be used for the purpose of completing a PhD thesis and any journal publications and conference papers that arise as a result of this research, and I consent for it to be used in that manner.

Signed

Date

...../...../.....

Name (please print)