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Representations of law in popular culture: Knowledge constructions, media deconstructions

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Representations of Law in Popular Culture:

Knowledge Constructions, Media Deconstructions.

BY

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ABSTRACT

This thesis investigates law and analyses its representations in popular culture. Law is a powerful institution within western society with a regulatory role that is supported by a range of complementary discourses that accord with society's dominant cultural values. This thesis proposes that while such institutional hegemony is never stable as there is always an expectation of challenge or resistance, law is currently experiencing a series of challenges on numerous fronts. Legal commentators themselves acknowledge that law now faces a 'crisis of confidence' that may affect its status and impact on its power to control and regulate. Media are cultural phenomena that can point to changes occurring in society, and this thesis, in examining law's representations in popular culture, seeks to determine whether challenges, as oppositional discourses, are present and available to media audiences. Law is generally regarded as 'over-represented' in popular culture, and television in particular, has developed a special relationship with the stories of law based on a shared preference for ideological closure. This thesis uses textual analyses to examine to what extent the challenges to law are allocated textual space within the texts of popular culture, as oppositional discourses and alternative versions of reality.

DECLARATION

I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any institution of higher education; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Signature.....

Date..... 1st March 1996

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CHAPTER 1

1. KNOWLEDGE CONSTRUCTIONS

1.1 Introduction

This thesis investigates law and analyses its representations in popular culture Media texts from both television and film will be examined to determine to what extent law's representations in popular culture, serve to reinforce or interrogate law's role in society.

Law's institutional role is that of a powerful agenda setter and regulatory agent. Indeed Thornton (1991, p. 11) ranks law as society's "central mechanism ... for transmitting and legitimating societal values." Law's regulatory role in society is supported by a range of complementary discourses which, for the most part, accord with dominant cultural values. This hegemonic control is, however, never stable, its "'victories' are never final" (Fiske, 1987, p. 41) as alternative discourses are constantly competing for their own particular 'truths' to be recognised and accepted. As a consequence, there is always an expectation that law's hegemony will be subject to challenge and resistance.

Indeed what is presently confronting law could be likened to a *blitzkrieg* on numerous fronts. That the law is under attack is openly acknowledged by those within the profession. The Sackville Report, "Access to Justice" (1994, p. 3) set up by the Minister for Justice, Honourable Michael Lavarch, was asked specifically to address the "'crisis of confidence' in the institutions fundamental to the rule of law .... [as]

public cynicism had extended to the very institutions at the heart of the justice system- the legal profession and the judiciary."

The challenges which confront law, and which are responsible for this 'crisis of confidence', come from a variety of sources:

- The first emanates from a general critical theory of institutions which, amongst other things, highlights the ideological significance of the institutional knowledge/power nexus;

- the second challenge has its origins in law's fallibility; the celebrated 'miscarriage of justice' cases, where law's relationship to science and increasing reliance on it, provokes scrutiny of both the legal and scientific processes;

- the third evolves out of the application of feminist theory to law which draws attention to law's masculine paradigm and gender bias.

Each of these challenges to law presents an oppositional discourse which is, in turn, taken up and re-presented by another challenger to law's authority, the media.

The media is an important contributor to law's 'crisis of confidence' through its own discourse, and through its discursive support of other critical discourses. This is confirmed by Cassidy's (1993) inquiries into the role of the print media.[1] Cassidy's research indicates that the press performs several functions, sometimes reflecting, and at other times directing, public opinion. Either way its role is influential: "(T)he

public is being forced, by the sheer volume of critical 'stories' they read, to confront the existence of continuing, often fundamental problems influencing the way law is dispensed in Australia" (Cassidy, 1993, p. 14).

In the press's treatment of law, Cassidy discerned a substantial shift in attitude which was observable and quantifiable over time. The once "uncritical, often reverential treatment" accorded law, has been replaced by "considerable dissatisfaction with many performative aspects of law-giving" (pp. 12-13) The question that arises from these findings is, whether the same degree of attitudinal change is detectable in law programmes on television? In other words is television also involved in critiquing law, and if so, how is this reflected in its representation in popular cultural texts? This query lies at the heart of this thesis' project.

It is clear that a great deal of what the public knows and understands about social institutions such as law, medicine, education and so forth, comes from popular culture, particularly from television. Cassidy (1993, p. 12) acknowledges that with the "law industry" this area remains under-researched: "Television, which has a significantly wider audience than any segment of the print media, is an important, but largely unknown force in shaping Australian attitudes towards the law industry."

Rather than use Cassidy's longitudinal model to measure attitudinal change, this thesis will examine individual texts to determine whether 'challenges' to law are present. What will be deemed significant in this process, will be the presence of alternative discourses and the degree of narrative space each is permitted within the text. In media terms, the texts will be analysed to identify how each oppositional

discourse is positioned within the context of the dominant discourse, and in relation to a preferred reading position (see Fiske, 1987).

Despite evidence of law's 'bad press' (Cassidy, 1993), there is an expectation, based on law's historic position in society, that most representations of law on television and film will serve to validate and reinforce law's traditional role as regulator. Oppositional discourses which encourage interrogation and scrutiny of law, may be allocated some narrative space, but these will probably be limited. This is in line with Cassidy's (1991b) and Rowe's (1988) observations, that law's fallibility is usually represented as an individualised flaw which seldom generalises to a critique of the institution as a whole. Cassidy's (1991b, p. 88) view is that "cultural agencies such as television and film" are actually closely involved in law's "reification."

Notwithstanding these assertions, this thesis proposes that a potential site for challenging hegemonies does exist within a range of cross genre texts now emerging from the United States. These texts are typically 'boundary stretching' in both their form and content and characteristically exhibit more open ended narratives and progressive storylines. Recent examples of this type of text include, NPYD Blue, Chicago Hope, Northern Exposure and Picket Fences. These cross genre texts attempt to balance their dual appeal of soap and drama, so as to fulfil expectations which attach to each genre. This textual balancing act, which is the text's promise to deliver according to established expectations, is the genre's "contract" with its audiences (Hartley cited in Fiske, 1987, p. 114). The polysemic potential intrinsic to these new cross genre texts, points to genre itself as an important, even determining factor in meaning making. It may be the case that genre actually dictates to a

significant extent, the progressiveness or otherwise of a text. This thesis, in exploring this notion, will consider aspects of genre to determine whether there is a correlation between textual polysemy and genre type. The expectation is that such a correlation will be found.

Before considering law texts individually, acknowledgement needs to be made of law's long term association with television and film. The significance of this is, that as a narrative subject within the field of popular culture, law is considered to be "over-represented" (Hartley & Fiske, cited in Chase, 1986, p. 551). Similarly the ongoing relationship between law and television is described by Karpin (1995, pp. 4-6) as "special", because, in Karpin's view, when "TV is reporting law it is doing law."

Law's narratives possess obvious media appeal; both favour ideological closure. Law's practice is premised on conflict which just "happens to mesh nicely with the perceived structural needs of drama" (Rosenberg, 1989, p. 1625). Furthermore, the need to hand down a judgement is intrinsic to law or as Cassidy (1991a, p. 66) puts it: "The law *must* be 'found' in all legal contests" just as traditional drama needs a resolution. There is thus a degree of synchronicity between the discourses of law and media which may counteract or inhibit institutional interrogation.

Another element which may influence law's representations may be its association with, and some would say dependence on, science. Science and the media, and particularly television which "is the principle bearer of the meaning of science" (Gardner & Young, 1981, p. 171), appear to collude in a 'positivist' enterprise to portray science as infallible. Through a range of discursive strategies science confers

power on associated discourses. The discourses of law and science intersect decisively in areas where scientific or forensic evidence is involved. Frequently within popular culture these instances of scientific 'certainty' are used to reinforce and endorse law's authority. As several of the nominated elements may be involved in how law is ultimately constructed and presented in popular culture, each will be examined within the thesis.

Thesis Outline

Having identified the first challenge as one linked to new understandings about institutional power, the thesis will commence with an critical overview of institutions. An investigative approach derived from Foucault and poststructuralism, together with some feminist insights, will provide the framework. The same analytic methods will subsequently be applied to law, as the specific institution under review. From this overview of the topic, a more detailed examination of both law and science, and law and feminism will be continued in subsequent chapters.

A similar methodological approach focusing on science as an institution, will be pursued in chapter two. Science's relationship to law is an important factor in Foucault's explanation of how law continues to assert and maintain its power. Aspects of this affiliation will be examined in this chapter. The basis for science's privileged position will be investigated to ascertain how it retains its particular status in society. Science's media presentations represent just one aspect of its discursive efforts in this regard. The constraint on science's media discourse points to one of the underlying contentions of this thesis, that institutions like science, are rarely critiqued in their media representations. When a challenge to science's 'infallible' status does

occur, it often emanates from a feminist subjectivity. A text which nominates itself as offering a feminist perspective, will be critically evaluated to identify how it critiques scientific discourse.

Having substantiated science's hierarchical superiority over law, chapter three will examine the law/science nexus as illustrative of the second challenge to law's authority. Science's association with law works discursively to validate law's judicial role. This is particularly apparent in the area of forensic science where science's claims to 'infallibility' allow it to take precedence over law. One of the questions that arises from this (mis)alignment is whether the hierarchical discrepancy between law and science, which favours science, affects judicial outcomes. Appropriate media representations will be examined to investigate how science's discursive strategies impact in the area. An assessment will also be made to determine whether this intersecting site is represented as problematic within popular culture.

Law has been interrogated most directly in recent years from various feminist perspectives. Feminism has excavated and exposed law as a masculine paradigm which masquerades as gender neutral and value-free. As a result of feminist endeavours legal reforms have been initiated. In chapter four, in reviewing these reform efforts, the feminist challenge to law will be examined. A textual analysis of two texts from popular culture, focusing on 'women's issues' in a legal framework, will be pursued in chapter five. The analysis will seek to determine if feminists' concerns have impacted on legal issues in television's mainstream programming.

In conclusion in chapter six, the range of textual analyses already undertaken will form the basis for an assessment of law's representations in popular culture. The task will be to identify whether any of the previously identified 'challenges' to law's hegemony, are evidenced in the texts examined. The presence within these mainstream texts of oppositional discourses, which allow or encourage interrogation with consequent destabilisation of law's dominant discourse, will indicate that television, like the press, is engaged in a critique of law.

1.2 Institutional Theory: An Overview

Law can be defined and examined from numerous perspectives but in this thesis it will be considered primarily from an institutional viewpoint. Accordingly this chapter will begin by examining law using investigative insights derived from institutional theory. In this theory, institutions share a range of defining characteristics, such as an hierarchical structure, exclusive membership and a distinctive language. Institutional theory proposes that these seemingly 'normal' indicators of institutional membership are ideologically loaded and far from neutral in their effects.

Within this chapter some general observations concerning institutions will be examined. These insights will be applied to law as a specific discipline, with emphasis placed on law's particularities as a discipline relative to its general characteristics as an institution. Through this process the discursive strategies which assist law in maintaining its hegemonic hold on society will become apparent.

Any interrogation of institutions presents the problem of incorporation. This aspect will be addressed and counteracted by employing a range of methodologies which

include Foucault's insights in respect of law and science and relevant feminist analyses. Both perspectives are useful in offering critical standpoints external to the institution. This approach is designed to reveal a number of the institutional characteristics which are particular and intrinsic to law One of the most significant of these, in terms of validating law's 'truth', is science. For this reason, law's relationship to science, manifest in a range of "'scientific' discourses" (Foucault, 1991, p. 23), will be specifically targeted for further investigation.

Background to Institutional Power

As one of society's many institutions, like education, medicine and science, law presents itself as another unique and discrete discipline. All institutions base their claim to status on the exclusivity of their particular knowledge culture. This strategy enables each one to exert considerable covert power over those within the discipline and overt power on those outside. Their pronouncements also carry weight which extend beyond the confines of the institution, because such advice is offered by persons designated by the institution as 'experts'.

Law's overt power is clearly visible in cultural practices which regulate society from birth to death. For instance, there is a requirement in our society to register both these events and failure to comply results in sanctions and penalties. Less visible are the covert practices implicit in each institutions' formation and continuation. It is the contention of this thesis that the contrived 'naturalness' of institutions deflects attention away from their institutional role as regulators, agenda setters and self-maintaining bases of power. As an example of how innocuously they can be regarded, Kress's (1989) description is instructive:

> Each has its own view of the world, which in many things reaches beyond the immediate concerns of either law or medicine or education. Each has its specific practices, its classificatory systems of relevant categories (illnesses, treatments, prescriptions, for instance) and all the linguistic technology that goes with these. (p. 110)

This can be contrasted with Bannet's (1989) more critical perspective which is based on Foucauldian principles:

> (V)arious disciplines imposed their norms ... delimited the truth that could be said ... regulated and controlled the methods by which these truths could be determined and transmitted, and ... excluded as error all knowledge which did not conform to their paradigm. (p. 101)

For the purposes of investigating institutions this latter description provides a more useful model from which to draw comparisons. Bannet (1989) eludes to the intrinsic features in the construction of institutions which explains their naturalness and acceptance as the 'commonsense' view within society. Quite plainly it is considerably more difficult to critique or argue against something that is denoted 'natural', 'normal' or 'real'. A great deal of the power of institutions lies in their very naturalness, as does the problem of critiquing them.

The problem is one with historical origins and relates to the rise of scientism in Western society. Scientific concepts of rationalism and objectivity became the 'perfect' standards against which each institution's knowledge claims were measured and tested. Institutions commonly 'borrowed' from scientific methodology in devising strategies to validate their own credentials. This in turn certified them as the correct and proper bearers of certain kinds of knowledge. Science is seen as being able to confer this power on others because, "'truth' is seen as the product of science or scientific 'methods'" (McHoul & Grace, 1993, p. 58). An example of this is the

'expert' who is credentialled (given status), on account of his/her expertise based on possessing a certain set of specific 'scientific' criteria which vary according to the knowledge culture.

From the perspective of science (rationality), the establishment of such an arbitrary set of rules ensures objectivity; dissent, as a consequence, appears irrational. Furthermore the epithet 'expert', neatly dissociates the message from the messenger, and promotes what Cassidy (1991a, p. 64) describes as author "invisibility." This process permits the subjective delivering the message, (offering the advice), to be successfully concealed behind an objective facade. Fiske (1987) draws attention to this same phenomenon at work, in the field of cultural studies:

> (W)e must never be content with asking and revealing what view of the world is being presented, but must recognise that someone's view of the world is implicitly or explicitly, obviously or subtly, inscribed within it. Revealing the "*who*" within the "*what*" is possibly the most important task of criticism.(p. 42)

The phenomenon of author invisibility is replicated in the seeming disregard and lack of acknowledgment by the institutions, of their own social constructiveness. The task of interrogating institutions which appear as 'givens' in our society, quite clearly presents a formidable challenge. Such an undertaking is necessary though, before an assessment can be made about the role their construction plays in the maintenance of their position in society. In assessing how law maintains its own privileged position, features alluded to earlier, (like the role of the 'expert', the exclusivity of language, the screen of scientism and the constructed 'naturalness'), will all be examined to identify how each operates to validate and reinforce law's status as an institution.

1.3 Examining Institutional Structures: The methodology

In critiquing institutions and their practices, some critics have adopted a Marxist political economy model with the associated premise that all power differentials within society are the result of existing class differences. Though such methodology could provide some insights, this thesis after extensive literary searches, argues that work drawing on both poststructuralist and feminist perspectives will offer more useful and relevant perspectives. Feminists in particular have reservations with the Marxist approach which in its, "privileging [of] the labour/capital distinction" and treating "gender as secondary to class relations" (McNay, 1992, p. 24), tends toward marginalising or excluding women altogether. This thesis will, as a consequence, be informed by recent work in the area of law and legal studies (Cassidy, 1991; Graycar & Morgan, 1990; Smart, 1991), criminology and sociology (Hunt, 1992; Smart, 1991; Sumner, 1990) and feminism.

The work of these researchers has been selected on the basis that they take account of, and thus more accurately reflect, ideas of power structures more relevant to contemporary society. In particular both Smart (1991) and Cassidy (1991) have usefully appropriated the work of Foucault and offer, through their analyses and discussions, various points of entry which relate quite specifically to legal discourse. The thesis will be further informed by Foucauldian work on specific instances where the role and structure of institutions is being investigated and where their power to command or control is under scrutiny.

The feminist perspective will be employed to reorientate, the 'natural' bias which flows from observations and conclusions based on patriarchal structures (Frug, 1992; Graycar & Morgan, 1990; McNay, 1992; Naffine, 1992; Smart, 1991). Kuhn (1982, p. 73) describes this corrective, as the process of "making visible the invisible." It entails the recognition, and taking account of, the personal perspectives of women whose life experience is one of subordination under patriarchy. Recent reviews instigated by the law itself into gender issues within its own discipline, clearly suggest a realisation that the present system is not equitable. (Senate Standing Committee's Report on "Gender Bias and the Judiciary." May, 1994).

One problem which presents itself, in identifying a satisfactory critique for institutions, concerns the difficulty of developing a methodology or a set of investigative measures which are not already part of, or incorporated into, the self-same knowledge culture. The problem according to Smart (1991, p. 5) involves "challenging a form of power without accepting its own terms of reference and hence losing the battle before its begun." An example of how this problem manifests itself would be in a criticism of science which would be deemed invalid or lacking in merit because it ignored or took no account of 'scientific methodology'. Similarly a 'commonsense' view on a legal matter would have no weight or validity because it failed to use or refer to the accepted judicial process; the so called 'legal method'.

As foreshadowed earlier, Foucault's work which concentrated particularly on the rise and development of the 'new' disciplinary society, with new "systems of knowledge" (McHoul & Grace, 1993, p. 58), including the 'psy' professions (Smart, 1991), has provided the basis for a useful critique for investigating other knowledge systems.

Bannet (1989, p. 101) in reviewing Foucault's theory of institutions and their knowledge cultures, identified the defining features as ones that, "imposed their norms .... delimited the truth .... regulated and controlled .... [how] truths could be determined and transmitted, and .... excluded ... all knowledge which did not conform to their paradigm." The logic of their acceptance is thus plainly assured because as Harland (1987, p. 103) observes, as each knowledge culture constructs its discourse it "furnishes the very criteria by which its results are judged successful."

Knowing a Knowledge Culture

Various studies now conceptualise knowledge as a construct that is subjective, variable and institutionalised rather than a serendipitous uncovering or discovering of information (Cassidy 1991; Smart, 1991). From this perspective, institutions construct their own knowledge cultures according to cultural biases that vary over time. The notion that the knowledge espoused and expounded by institutions is in some way objective, neutral or autonomous, is a fallacy, that remains largely unacknowledged by the institutions themselves.

The constructionist view of institutions is supported by the consistent appearance of certain distinctive characteristics, or "techniques" in Foucault's terminology (1991, p. 23), which could properly be regarded as intrinsic to their form and structure. One such distinguishing feature is an hierarchical form which, as a 'given', presents an effective structure that resists scrutiny and simple interrogation. Institutions, in fact, work to ensure the privilege of their discourses through various discursive strategies. For example they customarily authorise only certain persons, (representatives from within the discipline, the so called 'experts'), to speak on behalf of the institution.

While this principle is obviously demonstrated in institutions like law and medicine, it is in legal representation that the ultimate act of someone speaking for or on behalf of someone else, is most clearly apparent.

As a discursive strategy this operates at more than one level. Quite clearly the expert role, serves to enhance the credibility and 'truth' status of the established discipline. At the same time, at a more subtle level, the process of devaluing or discounting the claims of those from outside the institution is occurring. These "alternative accounts of social reality" (Smart, 1991, p. 4), representative as they are of the subjective world of comment, opinion and experience, are accorded little in the way of status or validity. Cassidy's (1991a) views are pertinent on this point:

> (T)he image of expertise and of being an appropriately credentialled bearer of knowledge operating in the context of an established discipline, or of a "government" or "industry" are asserted to distinguish legitimate views from mere opinion.[emphasis added.] For example, academically and vocationally lawyers represent the law (that is the apparatus called the legal system). Similarly, historians represent history, scientists, science and so on.(p. 63)

Feminists have quite rightly drawn attention to the way such binary oppositions operate to exclude and devalue the 'other', which characteristically include society's so-called 'minority groups', comprising women, Blacks, children, ethnics and homosexuals.

In identifying the characteristics of knowledge cultures, Foucault has provided a schema or paradigm with which all knowledge cultures can be scrutinised and interrogated. Indeed, despite criticism of Foucault's "gender blindness" (Sumner,

1990), social researchers have applied his precepts to a vast range of research areas. Feminists (Bartky, 1988; Sawicki, 1991), have been the most creative in their application of his work, incorporating the principles into areas ranging from reproductive technology to defining women's bodies.

Foucauldian against Foucault: Law and Power

At this point it is necessary to justify the application of Foucault's concepts to law since he himself attempted to exclude law as a relevant area of power, based on its diminishing role in a society developing new disciplinary regimes. Foucault's rationale, for what he saw as the gradual marginalisation of law, was its association with the 'ancient regime' (the monarch) and its traditional regulatory role within that system. With the replacement of the monarch, Foucault foreshadowed that law's role as a regulatory body, would gradually be, "supplanted by discipline and government as the key embodiments of modernity". (Hunt, 1992, p. 1).

Foucault's predictions in this area appear not to be supported by current evidence. Researchers in this field, such as Cassidy (1991)and Hunt (1992), in observing the place of law and its role in society, have noted that as a regulatory body, law still retains considerable force and power with an undiminished capacity to command and regulate. Indeed Smart (1991, p. 8) forcefully argues that law has increased its reach by incrementally extending its influence through a process of incorporation that includes "the growing legalization of everyday life from the moment of conception ... through to the legal definition of death."

The core of the problem, as Foucault perceived it, was that law represented the 'old' concept of power, one that was wholly imposed, repressive and negative. Such a concept of power was at variance with what he had identified as the multifarious and diffuse sites of power so typical of the twentieth century disciplinary society.

For the same reason Foucault also rejected as 'inadequate' the Marxist nexus between power and class: "(T)he idea of power as a commodity which some people, or a class of people, may 'own' (usually because they command wealth or economic resources) is inadequate to an understanding of contemporary society" (Smart, 1991, p. 7). Foucault's redefinition of power, as 'new forms of power' diffused through society via multifarious sites, is appealing in that it offers a rationale for why power is so readily accepted by those it is designed to control:

> We must cease once and for all to describe the effects of power in negative terms: it 'excludes', it 'represses', it 'censors', it 'abstracts', it 'masks', it 'conceals'. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth. (Foucault, 1991, p. 194)

This concept of power, as something positive and pervasive, and its apparent ready acceptance by those it affects, has parallels with Gramsci's notion of hegemony whereby dominance is achieved and maintained as an ongoing struggle for consensus. Foucault characterises this power balance as unstable, likening it to "a perpetual battle" (Foucault, p. 26).

This same scenario of a constantly moving equilibrium is observed by Fiske within the field of cultural studies. In this context he describes it as a juggling process, "whereby the subordinate are led to consent to the system that subordinates them"

(Fiske, 1987, p. 40). Gramsci's theory has special application in cultural studies where the notion of negotiation between reader and text is used to explain meaning making in the context of analysing texts.

Following on directly from Foucault's identification of the rise of the disciplinary society, is the need to explain how control, once established, is maintained despite the absence of a central unifying body to oversee the process. Foucault (1991, p. 304) posits that such control is created through a process of "normalisation." This notion of 'norms', internalised by discipline and maintained by surveillance, is something Foucault observed to be characteristic of the new disciplinary society. Smart (1991, p. 8) refers to this process as "the discourse of normalization" and postulates that two discourses of power, law and the new disciplines, actually operate in parallel. In this way, Smart cogently argues against Foucault's position that law's influence has waned or been superseded.

This facet of Foucault's work, which revolves around societal regulation and control, has its resonances in the field of media studies too. Foucault (1991, p. 217) noted, as a consequence of administrative and governmental data collection, the development of "surveillance" of designated groups within society. Populations became objectified as targets for study. This phenomenon of compiling population statistics and data, as knowledge for power, arose during the beginning of the eighteenth century with the advent of scientific rationalism. Though its purpose may well have been benign or even humane, others contend it was always for political control of the population, (Foucault, 1991, pp. 195-199), with an end result designed to control via categorisation and a process of normalisation. The internalisation of culturally

specific but seemingly 'natural' concepts, like what is considered 'normal', has lead in Foucault's view, to the development of the most powerful controlling mechanism of all: self-regulation and self-surveillance.

Extrapolating from these concepts to consider law's regulatory role in society, points to the relevance of Foucault's ideas to this thesis. Consider, for example, the culturally constructed meaning of phrases such as 'a law abiding citizen'. From the Foucauldian perspective it signifies someone who has successfully internalised society's norms and who unconsciously observes the rules of self-regulation. This is certainly not what this expression means when it used in general parlance, where the connotation is of an exemplary, high-minded, responsible member of society. The inference is decidedly positive. Revealed in this example are competing discourses whose frames of reference and claims to assent are different and unequal. The positive interpretation is supported by a range of societal and institutional discourses which invariably coincide with dominant cultural values.

This example is illustrative of how the Foucauldian approach to critiquing institutions and their knowledge cultures, can offer a perspective that avoids incorporation and promotes space for oppositional, 'other' viewpoints. As such it provides a useful paradigm for more general application. This thesis will apply these insights to the selected institutional processes and structures of law, and to some extent science, so that the constructed nature of each particular knowledge culture will be exposed.

1.4 Examining Law: "Its corpus of knowledge, its techniques, its scientific discourses"

Both science and law share the high status which society naturally accords to institutions of quality and privilege. Foucault would suggest that their relationship is even more immanent with science intrinsically linked to law's construction as society's regulator. Science's intrusion into the criminal justice system represents, according to Foucault (1991, p. 23), "a whole new system of truth .... (a) corpus of knowledge, techniques, 'scientific' discourses ... formed and ... entangled with the practice of the power to punish."

This definition clearly fixes and differentiates four constituent elements of law the institution: law's "corpus of knowledge" or its separate knowledge culture; its "techniques", or the specific validating measures it employs; its "scientific discourses", or its validating affiliation with science; and its "power to punish" which is the manifestation of the power it derives from a combination of the first three elements. Some aspects of law's knowledge culture, the so called "corpus of knowledge", have already been examined but the discursive strategies which operate to constitute law are also detectable in its "techniques" and "scientific discourses."

A specific example of a law "technique" which is evoked to establish its credibility, and which is central to its power to regulate, is the so called 'legal method'. Cousins (1988, pp. 131-132), in comparing historical investigation to the practice of law, comments on law's particular methodology: its "jealously guarded order of procedure" which includes its "definite rules of evidence .... due legal process .... [and its] legally

defined class of events." For events to have legal status though, they must fall into already established legal classifications.

For feminist scholars (Graycar & Morgan, 1990; Smart, 1991; Thornton, 1991) law's arbitrarily constructed categories form part of a systemic structural problem, which entrenches inequity and inevitably discriminates against those for whom the law was not originally designed or intended to serve. In the words of Graycar and Morgan (1990).

> Legal practitioners have always known that people's lives did not readily fit into legal categories .... For women, these artificial classifications are especially problematic since women have played no part in defining those categories. (p. 3)

Legal categories with their emphasis on the worlds of work, business, work-related injuries and criminality, reflect masculine perspectives. Finley (cited in Graycar & Morgan, 1990, p. 3) makes the point that applying "male frames of reference" to the concerns of women, can lead to their non-recognition as issues or to their being regarded as "doubly deviant." Criminality of any kind fits within this latter category. This represents just one area where law's "gendered partiality" (Graycar & Morgan, 1990) is exposed.

This tendency toward fixing specific gender characteristics, or "polarising gender" (Smart, 1992, p. 36), again relates back to the scientific discourses of the eighteenth and nineteenth century, when women's bodies became the focal point for medical study and intervention, based on biological difference. The gender differences, once articulated and formulated under the auspices of a scientific discipline, became

naturalised, and the resulting discourses further reinforced these 'natural' differences as the ideal. In this historical context Foucault's notions of control and surveillance are especially relevant. According to Smart's (1992) research, it is during this period, particularly the nineteenth century, that law turned its attention to women in particular ways.

> This century marks both the pinnacle of law's exclusion of women from civil society (e.g. the denial of the legal personality of married women) and the moment when written law began to inscribe in finer and finer detail the legal disabilities of Woman. (Put another way, we can say that gender became increasingly fixed in terms of its attributes and in terms of being increasingly polarised).(Smart, 1992, p. 37)

In examining this point more fully, Smart (1992) tracks specific instances where legislation became a measure for controlling women's reproductive capacity. In the wake of these regulatory 'gendering strategies', concepts of 'motherhood' developed, and with them, ideas of the 'good' and 'bad' mother (Smart, 1992, pp. 37-40). These historically constructed characterisations quite clearly influence perceptions and judgements today, and, in respect of judgements made on this basis, the law is similarly affected.

One of the most celebrated legal cases, where the issue of the 'good' versus 'bad' mother was observed to be central to the guilt or innocence of the accused, was the Chamberlain case. Howe (1989)(cited in Graycar & Morgan, 1990, p. 262), in assessing the media's role in demonising Lindy Chamberlain, argues that she [Lindy], was strongly portrayed as an "unnatural mother" because she was viewed as a "counter-stereotypical woman who refused to play her assigned gender role." In

supporting this view, Howe quotes journalist Goldsworthy, (cited in Graycar & Morgan), who agrees that it was:

> (P)ublic attitudes to motherhood and to female sexuality which informed and to a great degree shaped the course of Lindy Chamberlain's trial- a trial by jury, media and by the collective unconscious of an entire nation.(p.264)

Educating Lawyers: Gender and Partiality

Considering other situations where law's gendered partiality is in evidence, both Thornton (1991), and Graycar and Morgan (1990), have offered as an example, the way that legal epistemology is transmitted within law schools. Legal knowledge is constructed according to arbitrary categories and "fragmented" into specific areas of knowledge, which in turn are, "supported by the textbooks and the law school courses which replicate and reinforce those divisions" (Graycar & Morgan, p. 3). The divisions quite clearly reflect law's preoccupation with patriarchal and capitalist concerns, giving priority to subjects which, "privilege property and profits in accordance with the capitalist imperative: property and land law, contracts, torts, company law, equity and so on" (Thornton, 1991, p. 11). Seen as less important and less relevant to the 'real' (masculine) world, are options such as family and welfare law, environmental law, discrimination and consumer law; areas which characteristically affect the least powerful groups in society, many of whom are women.

Thornton goes on to argue that these options with their "human-centredness" and "peripheral status" are perceived as less valuable than core course components and avoided by career orientated students. Such examples exemplify how areas of concern outside those valued by the institution are marginalised, even though

paradoxically, it may appear otherwise because they are offered as options on the curriculum. The control exercised by the institution is subtle but as Thornton (1991) notes, the results accurately reflect the culture in which law operates:

> This hierarchisation of subjects within the curriculum reflects the ordering of the legal professional market which, in turn, reflects the dominant values of our society .... [It] also reflects the way in which the activities of the modern state are structured and conceived along patriarchal gender lines. (p. 12)

To change law's culture would involve educational reform. In her call for changes to "what goes on at law school" as a way of eradicating gender bias within the profession, O'Donovan, a visiting law professor from the United Kingdom, asserts that the established knowledge base has to be altered and expanded. This can be initiated, "by opening up legal conversations to women's experience and to women's knowledge" (1993, August 25). The Australian, p. 33.

In pursuing still further this idea of law's strict adherence to categorisation, this thesis contends that the basis for maintaining such arbitrary boundaries is bound up in an artificial divide or "dualism" known as the "public/private dichotomy" (Thornton, 1991, p. 12). This distinction is a construction of great importance to law as it defines areas where intervention is considered valid and appropriate or alternatively, inappropriate and therefore extra-judicial. In defining these zones Smith (1974) (cited in Graycar & Morgan, 1990) observes how the divide relates to gender:

> (T)he public sphere is that sphere where 'history' is made. But the public sphere is the sphere of male activity. Domestic activity becomes relegated to the private sphere and is mediated to the public sphere by the men who move between both. Women have a place only in the private sphere. (p.31)

Popular, Public and Private

In an essay relating to lawyers' images in popular culture, another legal academic, also comments on law's arbitrary divides. Fraser (1990, p. 3) observes that his legal colleagues are totally indifferent to any attempt "to smash the ideological barriers called the public/private distinction and the difference between law and (popular) culture." Fraser further confirms that law is orientated toward the male-oriented, corporate world of the public sphere, away from the private domain of women's interests and family matters. According to Naffine (1992, p. 69), the legal system has succeeded in constructing the family unit as a private zone of "non-intervention" (Graycar & Morgan, 1990, p. 30) based on the doctrine of classical liberalism and the pressures of the industrial revolution. This notional unit, the family, is constructed on the capitalist model of the head of the family, the male, working outside the home (public) while the woman remains within the home (private) in a reproductive and supportive role.

For feminists the isolating and quarantining of the private sphere is problematic, because it is within this sphere that 'domestic' issues, of a violent and/or sexual nature often occur. According to Thornton (1991, p. 13) the issue of domestic violence receives scant attention "because it is largely perceived as a private sphere phenomenon which cannot easily be subsumed within one of the subject compartments." The law's reluctance to intervene in the family relates quite

specifically to a privacy proposition in common law, encapsulated in the aphorism that 'every man's house is his castle'. As Graycar and Morgan (1990) point out, this assumption can be used to advantage, by those seeking redress for infringements of civil liberties, such as in homosexual law reform: "But it may also conceal a power struggle within the family .... (I)t also masks physical abuse and other manifestations of power and inequality within the family" (p. 33). It is these inequalities which particularly concern feminists.

In respect of domestic violence and recent changes to the law which give effect to the issuing of special restraining orders, Scutt (cited in Graycar & Morgan, 1990, p. 304) makes the point that violent acts within the home, are already covered under existing criminal law: "(T)he problem lies not in the inadequacy of existing law, but in the failure by police and other authorities to enforce the law." In Britain, Naffine (1992, p. 17) notes that the same lack of will by "law-enforcers" prevented similar reforms being effective in the 1970s.

In respect of an area defined as marital rape, where the assumption, reinforced by law, was that the wife was the property of the husband, both Queensland and the UK, continue to maintain this as an exemption under criminal law (Graycar & Morgan, 1990, p. 117). The legal immunity conferred under this exemption is justified under the principle of 'privacy'. Conversely in the USA feminists sought and obtained abortion rights legislation under a privacy provision. According to Barlett and Kennedy (1991) this initiative has been problematic in its implementation, as it is seen to impact negatively on "poor women":

> Grounding this right in privacy rather than antidiscrimination doctrine ... permitted the Supreme Court to limit access to abortion by poor women and ... reinforced the ideology that dominance and abuse within the "private" family are beyond the law's authority.(p. 3)

Beyond the Private: Law and Exclusion

Despite what seems to be law's reluctance to extend its reach into certain areas deemed 'private', Smart lists numerous examples where legislation has continued to be drafted in response to the developing human sciences. Areas involving marriage, divorce and children as well as medical conditions have all become, despite Foucault's predictions to the contrary, the subject of various forms of legislation. Smart (1991, p. 17) observes in respect of such areas that "law retains its 'old' power, namely the ability to extend rights, whilst exercising new contrivances of power in the form of surveillance and modes of discipline." This comment is supported by recent cases in the USA, where distinctions between maternal and foetal rights have led to charges being laid against women on the basis of their "conduct during pregnancy" (Karpin, 1995, p. 62). Such conduct may involve cultural factors too since, as Karpin notes, it is significant that where the defendant's race was recorded, "approximately 70% [of these cases] involve women of colour" (p. 62).

Another area of concern to feminists relates to the presumption of universality which is implied in the common laws legal paradigm, the hypothetical 'reasonable man' against whom all are judged. The notion that some objective, "neutral abstraction" (Thornton, 1991, p. 13) exists as a legal ideal can become a construct designed to obscure law's partiality. Quite obviously law is constituted as a masculine discipline and that is not only because the majority of its representatives, especially the

judiciary, are male. The discourses surrounding law are those associated with objectivity, rationality, power and aggression, concepts that are also closely identified with notions of masculinity. One example that Thornton (1991, p. 13) draws attention to, is law's "combative style of cross-examination." She describes this approach as "alienating" for women students who seek a "more personalised and relevant approach which takes cognisance of women's experiences" (p. 13). This same methodology and style works to constrain how legal arguments are presented by giving precedence to so-called reasoned debate and excluding demands that may appear "ambiguous and contradictory" (Bartlett & Kennedy, 1991, p. 3). Women's claims often fall outside the law's fixed and designated legal categories and, as a consequence, their demands are less likely to succeed.

These examples of law's exclusionary techniques find further reinforcement in law's own legal processes. Cousins (1987) contends that the method of legal argument is simply a set of rules which excludes and includes particular kinds of information, according to well defined principles. In other words it is a social construct not a infallible precept. The truth that is arrived at, is a particular kind of truth, "a strictly legal truth" just as history, using similar processes, claims to accurately present the past (Cousins, pp. 133-135). In observing how the two disciplines coincide Cousins says of the legal process:

> There are definite rules of evidence concerning admissibility. Hearsay may be discounted; clearly motivated witnesses may be impugned .... It might appear that the legal process attempts to establish what really happened in the past, but 'really' is used in a specialised sense. 'Really' is what is relevant to the law, what is definable by law, what may be argued in terms of law and evidence. (pp.132-133)

Similarly in reviewing judges' pronouncements, Cassidy (1991, p. 64) determined that it was an institutional process that "operated to entrench the context *and* the discourse, such as the 'law' and the judges utterances, as being the same thing." The process is aided too by 'author invisibility', which entails detaching the object (the words) from the subject (the speaker), and permitting the utterances to circulate as neutral, value-free narratives. Additionally the role of the 'expert' and the status of the knowledge culture itself, lend support to the notion that such pronouncements are objective.

The whole process is validated by an exclusivity of language, a "legitimating rhetoric" (Cassidy, 1991, p. 89) which distinguishes and empowers those within the discipline and excludes those outside. In the Law Reform Commission of Victoria's Report, (1987), "Plain English and the Law" (p. 11) linguists identified and formally categorised "legalese" as a separate, "identifiably different dialect or class of language." This report (p. 9) also noted significantly, that "legal language remains largely unintelligible to most members of the community." Exclusivity of language works as a powerful tool to identify and separate members of the institution from other, non-members. The knowledge/power nexus creates its own reality or 'truth', which operates to disenfranchise and disempower those outside the institution.

'Unique methodology': Law, Science and Other Stories

Another of law's defining characteristics which institutionalises power differences, is the principle of precedent. This procedure forms the basis for much law making but when scrutinised for its "unique methodology", is observed to be merely "a chronology of interpretations where the hierarchical location of the interpreter

[emphasis added] governs the "rightness" (authoritativeness) of the interpretation" (Cassidy, p. 67). Indeed Cassidy likens such pronouncements to the narrative construction of storytelling, with judges acting as, "the author(s) of episodes in a soap opera of dominant myths" (p. 67).

Closely related to law's unique process of judging, is law's distinctive appeal process. This system permits a legal procedure using the accepted judicial method to arrive at a (presumed) correct decision which is then subsequently overturned by a higher court. Such obvious 'judgement error' could properly be construed as a fault in the system. This anomaly is (re)constructed by the institution however, as absolute proof that the system works, and works well (Smart, 1991, p. 10).

Law's obvious fallibility, exemplified in such maxims as "the law's an ass", raises the question of how it, and similar institutions, are able to retain their inviolate positions? The answer, as has been demonstrated, lies in the power that each institution has to naturalise its position, and practices within society. Each achieves this mainly, by adopting and promoting various discursive strategies which are in accord with society's dominant cultural values. The resulting institutional structures and pronouncements remain resistant to interrogation because each institution sets its own standards and limits those authorised to speak on its behalf. Harland (1988, p. 103) aptly illustrates this process when he observes that each institution, "furnishes the very criteria by which its results are judged successful."

In the case of law's particular knowledge culture, it is seen to be supported by specific "techniques" and "scientific discourses" (Foucault, 1991, p. 23). These coalesce to

entrench law as the institution with authority to speak and act on legal matters. The discourses which bolster law's claims to power and status simultaneously act to discount and disqualify other knowledges and experiences. Law's discourse, as has been shown, also manages to accommodate a degree of 'fallibility' through incorporating and subsuming it into an accepted procedure known as its appeal process. Smart (1991) notes that both science and law utilise similar strategies, in order to achieve their end, which is to exercise power:

> Law's claim to truth is not manifested so much in its practice ... but rather in the ideal of law. In this sense it does not matter that practitioners may fall short of the ideal. If we take the analogy of science, the claim to scientificity is a claim to exercise power, it does not matter that experiments do not work or that medicine cannot find a cure for all ills .... we accord so much status to scientific work that its truth outweighs other truths, indeed it denies the possibility of others. (p. 11)

While it is clear that science and law share similar institutional characteristics, Smart alludes here to science's unique quality: that special 'truth status' which aligns it perfectly with western notions of rationality and progress. Smart (1991, p. 9) maintains that law does not need to call itself a science because "(l)aw has its own method", and certainly law offers its 'legal method' as one of its legitimating attributes. At the same time it is important to realise that the philosophical base underpinning both the legal process and science is the same; both are grounded in and proceed from positivism:

> Postivists are committed to the scientific method. To the positivist, what matters, scientifically, is what we are able to observe .... Transposed to the legal context, a positivist outlook interprets law as a collection of rules which can be authenticated as valid law by the application of certain formulaic tests. (Naffine, 1992, pp. 34-35.)

It seems clear then, that much of the power that law has accumulated, rests on its status as an objective, neutral, value-free discipline; in other words its claims to be 'something like science'.

Another aspect of the relationship between science and law that warrants attention, stems from Foucault's observations of science's role within the legal context.Foucault (1991, p. 19) proposes that "(a)nother truth" (science), has infiltrated law and through this expedient, now profoundly influences the judicial process. Judgements that were previously based on precise knowables, such as, "(k)nowledge of the offence, knowledge of the offender, knowledge of the law" (Foucault, 1991, p. 19), are now overwhelmed by matters extraneous to law with the result that: "a whole set of assessing, diagnostic, prognostic, normative judgements concerning the criminal have become lodged in the framework of penal judgment" (Foucault, p. 19). In other words legal discourse, and most particularly judicial outcomes, are being affected, and perhaps even 'infected', by the discourse of science.

It is apparent from this preliminary investigation that the relationship between law and science is important. Two distinct aspects suggest themselves as areas requiring special attention. The first involves law's claim to be 'something like science' which necessitates a testing of that claim and an exploration of its significance. One of the questions that arises is how valid is this claim? and what effect does such a claim have on law's position and role in society?

The second concern involves science's role as the bearer of 'truth', able to reinforce and validate other discourses. In circumstances where the discourses of law and

science coincide, the task will be to determine whether such an obvious hierarchical disparity affects judicial outcomes. These queries will be the subject of subsequent chapters. Before examining the science/law intersection, the first challenge to law, its institutional characteristics, will be investigated. A textual analysis of an episode of Law of the Land will be examined to ascertain how law is currently being presented to its Australian audience.

1.5 ATextual Analysis of Law's Institutional Features in an episode of "Law of the Land"

The series Law of the Land is an example of a cross genre text which combines aspects of action/drama and soap. Set within an Australian country town, much of the action of the original series centres around the courtroom and focuses on legal decisions made by a 'new' magistrate from the city. The drama content of the first series concentrated to some extent, on depicting how the law operates within a 'typical' rural community.

The dichotomy between city and country is a recurring motif throughout the series, and is actualised with the arrival in town of the new city magistrate. The dual resonances are reflected in the series title. The expression "the law of the land" points to a methodological approach (legal method), which revolves around how things are 'commonly' done. Things operate the way they do because of a 'created' precedent or an historical antecedent. The meaning of the expression in this context is analogous to 'the rule of law' and encompasses a whole continent or country.

The title's other meaning refers to the land itself, the country, as a natural entity distinct from the 'other', the city as 'alien' place. This reference to, and emphasis on, the land as something unique, is strenuously reinforced within the text. The narrative suggests that things, even something as universal as the law, operate differently in the country. This point is made early in the first episode, broadcast on Channel 9 on 20/4/93, when Chalmers, the retired judge, offers advice to the new magistrate:

"*It's not like the city where you can climb down from the bench and vanish into your life. Here you have to live face to face with your failures, as well as your successes, everytime you walk down the street* "

(Magistrate): "*And should that make a difference?*"

(Chalmers): "*On your decisions - no. It just makes the tough ones tougher* "

This dichotomy between 'law' and 'land' is overtly signalled in the opening and closing sequences of each episode through a split screen effect. Featured on one side is an almost static interior shot, representing the law, while the other side has a tracking aerial shot of the exterior, denoting the country. The juxtaposition of these contrasting images, one a desk with law paraphernalia on it, and the other, rolling shots of an everchanging countryside, is further enhanced by the use of different lighting effects. The static interior image, which moves gradually to include familiar farm items, such as a lace tablecloth, scones, an old phone, shed, boots and cartridges for a gun, is dark and sombre. By contrast the tracking shots of the countryside are brightly lit, enhancing predominantly primary colours of yellow and green.

These two pictorial representations, with their contrasting colours, content and movement, convey something of the breadth of the issues to be dealt with, but do not clearly prioritise 'land' over 'law'. A guide to the relative narrative importance of one over the other, is gained via the theme music. Its lively, uptempo rhythm, recalls previous TV series such as Bonanza or A Big Country, and positions the viewer to regard the text as of a similar country, 'western' generic type. This contextualisation suggests there might be significant compromises in law's narrative power.

From the start the countryside, 'the land' in the series title, is constructed as an important element in this text. The framing of the opening and closing sequences suggests this reading, and this is underscored by the deliberate omission of any individuals as identifiable characters in these segments. Customarily, the visual 'introduction' of characters within the opening credit sequences, act as genre indicators for viewers. This lack of screen time allocated for specific character identification in the opening segment is significant as it points to a democratisation of storylines within the narrative. Such a tendency is a feature of soap/dramas where screen time tends to be shared more equitably between characters. This narrative form allows several storylines to run simultaneously which in turn, offers multiple points of view. This polysemic tendency is apparent to some extent within Law of the Land, although the commitment to naturalism prevents the use of narrative devices, such as interior monologues or flashbacks, which are commonly used in soaps to advance plot, develop character and explain motivation.

Also signalled as an important element in the text, is a distinctively Australian subjectivity. In the narrative there is a strong and recurrent theme, drawn from a

persistent Australian myth of ambivalence, verging on antagonism, that exists between rural and city life. References reinforcing this attitude are both explicit, in dialogue between c' uracters, and implicit, through the actions of 'city' characters, such as the new magistrate, whose actions are shown to be out of kilter or inappropriate in a small town setting. Outsiders are considered to need some form of `re-education' into the special ways of country life.

The clear dichotomy between corrupt, impersonal cityscape and its counterpart, good, clean-living country (f)air, is at the same time swiftly undermined by plot considerations. As an example of this, the first episode includes instances of racial problems involving drunkenness, the theft of the magistrate's vehicle by the policeman's son, a bank holdup caused by farm repossession and rural recession, a murder mystery and errant teenagers in conflict with their parents. This level of unlawful activity though improbably high in 'real' terms, in no way disturbs the pervasive underlying premise on which this series is based: that small town, country life is solid, stable and secure.

All of these incidents appear as disruptions to the presumed equilibrium of country life, and they form the basis of narrative action in the text. Significantly all require legal intervention for their resolution. The following analysis of one of the incidents, will be used to give some indication of how law is regarded generally within the series.

Laying down the law

The storyline relating to the bankrupt farmer and the banker commences in the first episode, broadcast on 20/4/93. Its emphasis on violence probably owes as much to commercial considerations, attracting an audience to the series, as it does to concerns about the plausibility of the plot. The high point of the action involves Harry Miles, the farmer, driving into town armed with a shotgun and taking Ray Richmond, the bank manager, hostage. Before Harry goes into the bank, the camera lingers on him deliberately loading two cartridges into the gun barrel, indicating that he 'means business'. The music at this juncture underlines the seriousness of the situation with a heavily melodramatic insistence which continues throughout the siege scene. Harry's resorting to violence has been precipitated, and given motivation in terms of the narrative, by the bank erecting a mortgagee-auction sign on his property.

Harry is presented sympathetically, as a man at the end of his tether; someone who has no redress available to him, except an act of violence. The preferred reading aligns the viewer with Harry, who, as representative of the archetypal 'Ausssie battler', is positioned oppositionally to the bank, an institution whose callous indifference and insensitivity to the rural situation clearly marks it as a symbol of citylife. This reading is strengthened by extra textual knowledge of 'hard times' in the country circulating widely at that period. Issues such as the rural recession, farm repossessions and bank foreclosures form the social matrix in which this text is located and comprehended.

The hostage scene, where Harry enters the manager's office with the gun and confronts him with the words "*You bastard*", fades to a commercial break to resume some time later with police sirens going and the townsfolk assembled outside the

bank. During this break some action takes place in the manager's office resulting in a window being broken. The exact cause of this breakage is never definitely established although there is a clear inference that Harry shot at the manager, missed him and broke the window. The confusion and ambiguity that surrounds this incident is quite deliberately maintained as it provides an acceptable 'out' for Harry, in terms of audience acceptance of the legal outcome, when the matter subsequently comes to court. Quite clearly the missing narrative pieces could have been revealed using 'flashback' which is a device commonly accepted even in the realist mode. But the opportunity to reveal the extent of Harry's culpability is not taken, because the audience is deliberately positioned to accept that the law's decision, an acquittal, is correct, based as it is, on the evidence tendered in court. The viewer, like the court, is never privy to all the evidence and this omission is quite deliberately engineered. The ambiguity of Harry's situation, vis-a-vis the audience, has to be maintained to preserve the image of the law as an infallible institution.

Any residual ambivalence surrounding the correctness of the verdict, is virtually obliterated by a plot deviation which has the bank manager revealed as a 'bad' character who, according to Chalmers, has *"played hard and fast with banking regulations."* Ray, the bank manager, in his suit, tie and dark glasses is constructed as the antithesis of the honest, hard-working farming folk of the community. In his initial callous disregard for Harry, and subsequent vindictive desire for revenge against him through the courts, Ray represents the worst aspects of city life. His capitulation in court where he retracts his evidence about Harry firing the gun: *"I jumped to the conclusion that he shot the window"*, is a result of his being informed, during a court adjournment, that his own reputation and truthfulness will be

scrutinised on the witness stand. In replying to the magistrate's query as to whether he discussed his evidence with anyone during the break, Ray responds in the negative. Although this answer is technically correct, it conceals a real 'truth'; that the information given to him caused him to 'reconsider', perhaps even conceal, what he really believed happened. But then Ray is a character whose honesty is questionable so perhaps this plot twist, which leads to Harry's acquittal, is of little substance in critiquing the law.

This same problematic ambivalence is apparent though, in other sequences surrounding the trial. The viewer is positioned toward accepting the proposition, that 'good' characters on the basis of their 'good' intentions are justified in whatever they do. A clear example of this is Hamilton Chalmers' involvement in the bank siege and his role as a witness at the trial. Chalmers, the former judge and town elder statesman, bravely confronts Harry at the bank office during the siege and eventually convinces him to release the cowering bank manager. While Harry holds forth about the effect of the recession on the small farmer and the bank's crippling interest rates, Chalmers, the voice of reason, calmly states the obvious: "*Your wasting your time talking to Ray- he's not one of us... He's not worth wasting a bullet on.*" Again the city/country binary opposition, the 'them' and 'us', is overtly activated to incorporate viewers into the 'us' position, even though the majority of viewers are likely to be city based.

With the manager released unharmed, Chalmers emerges from the bank holding the gun. In handing the gun over to Clive, the policeman, he deliberately breaks the gunbarrel to show no bullets are in the breach while commenting that because it is not

loaded, the charges will be substantially reduced: "*It's a lot of fuss over nothing, Clive* " The next scene is of Chalmers in his car, removing two bullets from his coatpocket and placing them in his briefcase. There is a closeup on the bullets, fading to a commercial break.

Constructing the case

This act by Chalmers, himself a lawyer and former judge, raises several issues relevant to the law. Firstly, it is clearly an act of compassion done to protect another, perhaps weaker person. The element of class difference, involving the patriarchal figure, is obvious here and indeed referred to specifically by Harry during the siege, when he quite rightly observes that the bank would not be kicking Chalmers off his property. The other aspect it raises is the right of someone like Chalmers, who has been intimately involved in the law, to take it upon themselves to interfere with evidence and possibly alter the course of a legal outcome. When the policeman, who is suspicious about the unloaded gun, challenges Chalmers to empty out his pockets, Chalmers, without a trace of irony, invokes the law in his defence: "*You'd need reasonable cause to search me Sergeant.. and you know how fond I am of hunting.*"

The audience is positioned to view Chalmer's blatantly illegal act of removing the bullets as meritorious. Chalmers is constructed as brave, honourable and obviously smarter than the policeman, who, in any case, shows signs of being a non-admirable character, a 'bent copper'. In the ensuring court scene, Chalmers, who is called as a witness for the prosecution, chooses his words meticulously and cleverly avoids implicating himself. Nevertheless when the young police prosecutor Marc Rossetti, attempts to reopen the subject of the loaded gun with him, Chalmers protects himself

from scrutiny, and possibly from having to lie, by reference again to a legal technicality: "*I don't think the rules of evidence allow you to re-examine your own witness Mr Rossetti.*"

With this fine point of law, and Chalmer's final statement, which confirms to the court that, "*Harry had not unloaded the gun in [his] presence*", the scene has been set for what in objective terms, can only be described as a possible miscarriage of justice. The text's preferred reading, on the other hand, ensures that the scenario fits comfortably with viewer expectations of how 'good' characters can expect to get justice from the law. The fact that the 'right' result, Harry, the good, honest, hard-working chap is acquitted, is achieved through a process of deception, 'blackmail', legal manipulation and half truths, is not commented on, or scrutinised in the text.

The magistrate, in his sentencing address, makes it clear that he can only make a judgement on what is presented to the court. In other words the law is not at fault, if 'wrong' or incomplete facts are presented. The subtext here reiterates Cousin's (1987, p. 133) observation, that law is not interested in the truth per se, but in a certain kind of truth, "a strictly legal truth." The law we must assume would not have been able to arrive at this 'correct' (compassionate) decision, if all the facts had been presented. And this may well have been the case. An attempted murder charge (loaded gun) as distinct from an assault charge (unloaded gun), would certainly have warranted more than a two year good behaviour penalty. With this neat conclusion, the viewer is not encouraged to scrutinise or speculate as to whether the law has the capacity to take into account human factors which may provoke violent acts. The resolution that is offered, refuses to acknowledge the possibility of a structural problem with law.

Instead, as both the plot's perspective and audiences' expectations coalesce without disjuncture, any overt or implied criticism of law itself is avoided.

Reconstructing the case

Some other pertinent legal issues are also aired in the trial which reveal the artifice and constructed nature of law as an institution. One instance concerns the packaging of facts in conformity with law's strict rules of evidence as a way of defining what is 'admissible' in a court of law. Another is the way that certain acts or events, irrespective of their individual context, need to be fitted into pre-ordained categories designated by set legal principles. To move from one category to another, for example from attempted murder to assault, has important ramifications in terms of how seriously the act is viewed and what sentencing rules apply.

In respect of the latter circumstance, shortly before the trial begins, Harry's solicitor, Kate Chalmers, tries to negotiate down the charges with the prosecutor Marc Rossetti. There is no suggestion that this is anything but right and proper on her part, portrayed as a normal procedure not an attempt to pervert the course of justice. Even the policeman overhearing the 'offer' suggests that Marc should take the deal. What Kate proposes to Mark is that her client will plead guilty to lesser charges if "*you [Mark] nod your head to simple assault and resisting arrest and drop all the others.*" Mark's counter offer is a plea of guilty to all charges and, "*I won't press for the maximum.*" Kate rejects this offer, as jail is the inevitable outcome of that scenario.

Such blatant negotiating and juggling between legal categories exposes the arbitrary constructiveness of procedures which form the basis of the legal process. Again there

is no suggestion in the script, that a grossly altered, emasculated case, concocted behind the scenes by respective lawyers, would in any way effect or alter the administration of justice. The viewer is not positioned toward admiration of Marc for his refusal to deal. Indeed Mark is portrayed as a loser who is not clever enough to recognise a good deal when it is offered, and, in the cut and thrust of legal combat, he is seen to be no match for the former judge, Chalmers.

The other aspect, which involves formulating and honing events so that the facts represent 'valid evidence' in a legal context, is also clearly presented in the trial sequence. A situation which demonstrates this issue, occurs in a corridor discussion between Kate, the solicitor, and her client Harry, during an adjournment. The important element under discussion is the 'accepted' legal strategy of excluding and omitting facts, or persons, that are obviously relevant to a case and who can and should speak to the truth of the situation.

Kate begins by asserting quite forcefully that she hasn't asked Harry if the gun was loaded because "*I don't care* " Harry replies that all will be revealed when he takes the stand to which Kate responds that she will not be putting him on the stand. Harry's anger at this, revolves less about truth-telling and more about 'getting his day in court' and having the opportunity to explain his actions so that he does not "*appear like a deranged bloody idiot.*" For Kate's legal purposes of course the illusion of derangement, whether real or not, is an important element because "*It goes to mitigating circumstances.*"

This scenario is so much at variance with the oft-quoted legal maxim which forms the basis of the witness oath, 'the whole truth and nothing but the truth', that it could be presented as a critique of the legal process. It is not. Kate is a bright and caring, young lawyer using all her skills to get her client off while Harry's refusal to acknowledge her efforts, even after the event, serve to mark him as foolish and as an ingrate as well. His concerns about a defence which portrays him as "*out of his tree*" are seen as unreasonable if prison is the alternative. Clearly the text is positioning viewers toward seeing Harry as someone who may indeed be mentally unstable. For doesn't he realise that it is 'logical', 'perfectly proper' and indeed, sanctioned by law itself, to use the system to your own advantage? A lawyer who did otherwise would be derelict in her duty to her client. But what does this presumption say about law?

Summing up the case: Outcomes

The narratives of Law of the Land foreground topical social issues which include references to rural environmental matters, Aboriginal racial concerns and the problems of rural youth. Their inclusion suggests the possibility of progressiveness. With gender representation too, the casting of women in strong, lead roles, as solicitor, farmer and farmer's wife, indicates a recognition of the necessity to provide spaces for women within the text. These positive trends are not reiterated however, in the text's representations of law.

In this series the institution of law operates as the moral centre piece to arbitrate and resolve the narrative disruptions. It is projected as the only proper, 'objective' regulatory body equipped to do the task. The unquestioning acceptance of law in this role is proof of its powers of 'incorporation.' Smart (1991, p. 5) notes, that

challenging any institutional power is problematic because it involves "accepting its own terms of reference and hence losing the battle before its begun." Tangential to the numerous plot lines, which are a feature of the soap genre, are instances where the law, in the form of the new 'city' magistrate, is seen to be seriously compromised, though this fact is not commented on by the text. Justice does prevail in the end through a narrative closure which conflates the issues into ones of minimal importance resolved as matters of a personal nature.

Basing the series on the premise that law's 'method' is inevitably correct, automatically ensures that flaws and faults are assigned elsewhere. Utilising a different perspective the instances examined, could have been used to critique law. For example why was 'justice' for Harry dependent on Chalmer's illegal removal of the bullets as evidence; in other words human intervention? How is it that 'legal method' and knowledge of that method, can be 'lawfully' used to conceal unlawful acts? as when Chalmer's intimate knowledge of law's rules protected him from physical and verbal examination. This instance actually exemplifies Naffine's (1992, p. 76) contention that law is designed for, and best serves a particular 'legal subject': "Consistently, the identity suggested is of an autonomous, self-interested, competitive man of property operating in a hostile and competitive society of like-minded people." For others, those less able to benefit or take advantage of law, they must be slotted or squeezed into one of law's designated categories.

In the case of Harry, whose version of events is never told, is this not an instance of law's 'truth' actually being at odds with what actually happened? Could 'justice' not have been done if all the facts, including Harry's testimony, been submitted? On this

point Smart's (1991, p. 11) observations are relevant: "The problem for lawyers is that the litigant may bring in issues which are not, in legal terms, pertinent to the case, or s/he might inadvertently say something that has legal significance unknown to her/him."

All these examples demonstrate a reluctance on the part of the text to confront and challenge law, and this may in part be related to genre expectations. This version of the soap/drama, which prioritises character above social or political elements (Fiske, 1987, p. 149), assures viewers that the characters presented as the main protagonists, the male magistrate and the female solicitor, will inevitably act and conduct themselves in an ethical manner. Thus outcomes based on legal judgements will not be compromised. Narrative resolutions, based on the personal attributes of the characters, deflect serious scrutiny away from the universality and reality of the problems raised. Problematic issues which do arise, such as conflicts of interest, interpersonal relationships with colleagues whose clients will appear in the court for judgement, and the obvious difficulty of dealing impartially with people known personally in a small town situation, are all presented as real scenarios in the narrative. The characters too, articulate an awareness of the difficulties these situations represent. But for the most part, dilemmas are resolved by way of an appeal to personal integrity and sound moral fibre. In this way law's systemic faults are individualised with the result that the law itself remains sacrosanct and impervious to challenge. This outcome is in keeping with Rowe's (1988, p. 37) assessment of another law series, LA LAW: "Our heroes may be flawed, but the law is not."

While the televisual account of law in Law of the Land ignores the contradictions that are inherently a part of law, the institution, a recent example from fictional literature offers an interesting comparison. Novelist and lawyer, Nicholas Hasluck, writes about law from within the institution. In an excerpt from a recent novel, A Grain of Truth (1993), Hasluck's lawyer character, openly acknowledges the "great irony" of law; namely that law, in practice, is inherently contradictory.

> 'And the rules of evidence can be used to keep, the jury in the dark, 'Jane chipped in, speaking almost bitterly. 'That's the great irony about the law. The public sees a widely respected advocate in action, mouthing noble sentiments, and believes he stands for morality and justice: the traditional values of society. But actually most of his techniques are aimed at subverting rational argument - constantly interrupting, confusing witnesses with nit-picking questions, blocking the presentation of crucial facts, shaping the truth to suit his client's case. Deep down, the professional advocate has to be something of an anarchist.' (Hasluck, 1994, p.218)

This passage actually critiques aspects of law which are ignored in Law of the Land. Under particular scrutiny is the legitimacy of law's claim to 'construct a case'. As this excerpt demonstrates, this procedure is more accurately described in Foucauldian terms, as "shaping the truth.".

Although Law of the Land is a contemporary text, in its espousal and replication of law's own view of itself, it firmly reinforces a dominant cultural position. The text's lack of progressiveness in its representations of law, points to a definite 'lag time' between the film and television representations of law, and the 'critical' literary work of scholars in the same field. Kuhn (1990, p. 5) notes a similar disparity between the visual and literary representations within the genre of science fiction.

Both the television and literary examples cited, offer a contrasting discourse on law yet both are contemporary texts, sourced from Australian culture. In proposing that institutional hegemonies such as law, can be challenged through the contemporary cross genre form, it seems a distinction needs to be made too, between those texts originating in the United States of America and the equivalent Australian text. It is the contention of this thesis that the emerging cross genre texts from the United States give semiotic proof, that there is a major cultural gap between their representation of contemporary social issues, compared with Australian narratives covering similar topics. This theory will be tested when textual analysis of one of these texts in undertaken in a later chapter.

CHAPTER 2

2. SCIENCE AND TELEVISION

Some of the power that law has accumulated rests on its claims to be 'something like' science. In investigating this claim, this chapter takes a structuralist approach using binary oppositions as a starting point:

SCIENCE	LAW
• lays claim to 'absolute truth' based on verifiability and replicability which is based on the so called 'scientific method'.	• has truth claims based on investigation of 'facts' by the so called 'legal method'
• is concerned with events in the future	• is concerned with events in the past
• has good predicability claims inherent in its methodology	• has poor predicability claims
• makes claims to universality	• has claims based on specifics and circumstances
• by its nature favours the new and novel	• has the rule of precedent which favours analogy from past cases with assimilation of the new into the old.

(Mykitiuk, 1993, p. 69)

This structuralist perspective reveals some obvious, though perhaps not major, areas of discrepancy between the two disciplines. The science/law nexus and the issues it

raises about the hierarchy of discourses, will be the subject of the next chapter, but initially, it is necessary to investigate science or 'put science under the microscope'.

The review of science's discourse will be done through science's representations on television because these illustrate science's role and position in society and indicate how closely science's representations in popular culture relate to science, the institution. As with law, television texts examined in this thesis provide a site to chart the relationship between the institution and any emergent or alternative discourses.

Researchers, Gardner and Young (1981), who conducted seminal research in this area, contend that science's conventional representations inevitably tend to replicate and lend support to the positivist scientific discourse. Such projections invariably promote dominant ideology: "The current ideology of science on TV is a material force in reinforcing current priorities and practices in society" (Gardner & Young, 1981, p. 171). The nature of the relationship between science's representations in popular culture and its institutional face, provides a useful model with which to compare law. The comparison cannot be exact of course, because law does not possess the 'special' attributes which makes science unique amongst knowledge cultures. The questions that arise are: What is it that sets science apart from other disciplines? What are its 'special' characteristics which make it the paradigm against which others are measured and judged?

2.1 Examining Science

Science's claims to "privileged status" (Lievrouw, 1990, p. 2) are based on a range of defined characteristics which accord perfectly with western industrialised society's

notions of rationality and progress. It is no coincidence that these characteristics tally with what makes good economic sense. A recognition of the close historical links between science and the capitalist imperative, goes some way to explaining how science has been able to maintain its unassailable position as the icon of knowledge cultures. Science's rise to pre-eminence as a discipline, coincided with the rise of the industrial society and the decline of traditional social structures such as religion and the monarchy.

Science's objectivity and validity are 'guaranteed' by an appeal to its so called 'scientific method' but there is at the same time, an underlying economic rationale which bears on the overall representation of science. It needs to be acknowledged that it is in science's own interests to ensure that it is represented (for example on television), as an error-free font of knowledge: "The maintenance of science's privileged status among ... [other] competing 'knowledge cultures' helps scientists ensure the continued economic and social support of science" (Lievrouw, 1990, p. 2).

So in order to preserve its own economic viability, science has a need to project itself (or be projected) as something essential to society's future. When comprehended from this perspective it should come as no surprise to learn, that the researchers examining media representations of science, (Dornan, 1990; Gardner & Young, 1981; Hornig, 1990; Silverstone, 1985), all comment on its almost unrelenting discourse of positivism. Such observations are particularly directed at television's representations of science, and this is significant, because television remains the major disseminator and populariser of science in western society (Barnes, 1989; Gardner and Young, 1981).

The substance of the claim by these researchers is that television, by constructing media images reinforcing a view of science that is invariably progressive, infallible and value-free, colludes in science's positivist project. In presenting such constructions, the programmes replicate the Foucauldian "discourse of science", with its much "vaulted objectivity of 'scientific' method", which includes its practice, ("'experimental' approach"), its language ("way of speaking"), all working together to support the whole (the institution) (Harland, 1987, p. 103).

As was suggested previously, one of the results of ignoring and disqualifying alternative positions, is the de-limiting of meaning. Hornig (1990) observed just this tendency in the American television documentary science series *NOVA*:

> In the role of television, then, the sacredness of science becomes transformed into the special character of scientists, they become the high priests who negotiate for us between their mysterious world and our more mundane one. The scientist of NOVA is defined as a special- it is tempting to say "superhuman"- person rather than as a human being performing specialised activities .... The NOVA scientist generally appears in a suit and tie if not a laboratory coat against a background that identifies his role for the viewer. Scientists appear before blackboards covered with equations and in offices lined with books and littered with notes.(p. 17)

In this extract Hornig identifies some of the devices and techniques which routinely accompany science presentations and help to define it as a 'sacred' knowledge system. She signals the notion of a mystery that needs solving, the invincible scientist on a specially assigned mission against an enemy, (often identified as time itself, hence the oft used phrase 'the race against time'), and the latent potency of scientific accoutrements which clearly underpin the credentials of the expert. Such a scenario, coupled with other production devices, patently carry "ideological implications"

(Hornig, p. 21) and in terms of audiences' readings, strongly signal a preferred reading toward an uncritical acceptance of science's project.

The scientific discourse is at base a positivist discourse of continuous experimentation. It is a 'perfect', fail-safe, mechanism which incorporates 'failure' into its very methodology but avoids naming it as such. Underpinning the scientific method and integral to it, is the notion of 'falsifiability', which has as a requirement the necessity to endlessly attempt to disprove a given hypothesis (Popper, 1974. pp. 36-37). It is for this reason that, "experiments [that] do not work ... [and] medicine [that] cannot find a cure" (Smart, 1991, p. 11) are able to be represented in science as merely 'work in progress.' They are not perceived nor presented as failures of the discipline itself. Law's appeal process can not offer quite this degree of absolute certainty though it does accommodate what could be regarded as a system's failure.

2.2 Science on Television

Even with the systemic 'bias' which guarantees science its special status, its representations in popular culture are observed to be tightly constrained and uniformly formulaic (Bell & Boehringer, 1989; Gardner & Young, 1981; Silverstone, 1985). Control is particularly enforced in respect of showing science as a process. The exposition of the scientific approach as 'ad hoc' and 'fluid', would clearly provide opportunities to observe gaps in the prevailing hermeneutic discourse which could in turn "threaten the privileged status of scientific conclusions" (Hornig, 1990, p. 12). It is for this reason that science programmes on television tend to adhere to a definite fact/fiction divide with high status accruing to the high modality, factual mode.

Within this mode, strenuous efforts are made to distinguish between the public world of work and the private world of the scientist.

This artificial divide which separates the public from the private has resonances with law's "public/private dichotomy" which was cited by Thornton (1991, p. 12) as being highly problematic. Science, in adhering to such arbitrary divisions, attempts to quarantine 'objective' science away from the 'subjective' contaminant, thereby avoiding the possibility of disruption to a well established discourse. This strategy is rigorously enforced, according to Pinch and Collins' research (1984), because "revealing the private character of scientific activity ... can have a deconstructing or delegitimizing effect on the resultant science" (Hornig, 1990, p. 12).

These characteristics of science programmes on television, are observable across national borders. Gardner and Young's (1981) research on UK science programmes, has been replicated by Bell and Boehringer (1989) in Australia, which further confirms Silverstone's (1985) work on the BBC's science series, Horizon. Similar research in the USA by Lievrouw (1990), Dornan (1990) and Hornig (1990), all note a uniformity of presentation which is characteristic of science on television. On the basis of this work, researchers are in general agreement that a whole array of discursive practices operate to construct science's positivist discourse for popular culture. As Gardner and Young's (p. 174) observations conclude, "a firmly-established, highly-regarded set of conventions [exist] ... which are expository, narrative and fundamentally celebratory, purveying culture to an audience of passive consumers who regard a spectacle."

As well as exposing the institutionalised practices underlying science presentation, Gardner and Young (1981, p. 174) draw attention to a representational pattern which divorces science from its social environment, de-contextualising it as though its impact is naturally "neutral." Such deliberate segmenting or fragmenting denies a contextual setting, and parallels feminist concerns over the proponents of one of the new sciences, reproductive technology. These concerns similarly centre around women being perceived as an "assembly of parts" rather than as "a person as a whole" (Klein, 1989, p. 287).

The example of reproductive technology is also useful in demonstrating how science, quarantined from a social context and from critical enquiry, is able to pursue unique forms of research unhindered by either moral or legal constraints. This particular area of science has quickly consolidated itself and legitimised its position by developing a discourse which is supported by its own special language. Phrases such as 'altruistic surrogacy', 'surrogate mother', 'harvesting eggs' and 'selective termination' are now as commonplace as are the descriptions of the multiple births of quads and quins, as 'multiple multiples'. Such terminology is not neutral 'scientific' language but language loaded with persuasive intent which operates to conceal substantial ethical dilemmas.

Science television programmes dealing with this issue have, for the most part, eulogised its scientific possibilities and failed to critically analyse, or even apprehend, any consequent social impact. Instead reproductive technology's association with the origins of life itself represents the ultimate in the 'gee whiz' science experience.

Typically this kind of science is presented in a style, Dornan (1990, p. 63) describes as the, "Eureka approach to science reporting" where routinely, there is the inclusion of an historic 'breakthrough' or a mystery solved.

Other media, particularly radio and print (Barnes, 1989, p. 27), offer some opportunity for debate on scientific issues. With television, it is within the area of the social sciences that alternative discourses for critiquing the new science of reproductive technology have developed. The debate surrounding this, and other issues of particular concern to women, has emerged out of a more general critique of scientific epistemology begun by feminists. Bleier (1988, p. 62) argues that feminism offers an important theoretical framework, which can "disrupt" and "subvert" and even provoke "open conflict at key points of greatest interest." Bleier's metaphor for science, comparing the "lab coat" to the "klansman", is a powerful one, and echoes Naffine's (1992, p. 100) assertion that fundamentally law, like science, is male.

> It is the lab coat, literally and symbolically, that wraps the scientist in the robe of innocence ... and gives him, like the klansman, a face of authority that his audience can't challenge. From that sheeted figure comes a powerful, mysterious, impenetrable, coercive, anonymous male voice. How do we counter that voice? (Bleier, 1988, p. 62)

In countering science's male voice, feminists have developed a series of strategies to interrogate science's methodology. The motivation for this stems from feminists who early-on indentified science, and particularly the medical "power-knowledge" area of science, as forming "key sources of patriarchal control over women" (McNeil & Franklin, 1993, p. 134).

2.3 Textual Analysis of a Progressive Science Text

An alternate (feminist) view on reproductive technology was presented in a two part documentary series Making Babies, shown on SBS in 1994, as a co-production of the National Film Board of Canada and the Canadian Broadcasting Corporation. The first part of this one hour documentary called, On the 8th Day -Perfecting Mother Nature set about establishing a societal context for reviewing this new science.

At the programme's outset, the documentary-style camera work and snippets of verbatim conversation, starkly expose the close, symbiotic relationship linking the science of reproductive technology with the technological industry. With accompanying film footage from the '7th World Congress on IVF and Assisted Procreation', the female narrator makes the announcement that *"over 3000 doctors and salesmen gather in Paris to pitch the latest in reproductive technology."* Science and industry in this context are artfully yet accurately described as *"partners in the reproduction of life "* During this sequence the camera pans to shots of the Conference 'marketplace'. Salespeople are heard extolling the virtues of freezing-canisters for human embryos, computers are on hand to analyse sperm mobility, everywhere 'state of the art' technology is shown being co-opted and utilised in this endeavour. As the voice-over continues with the statement that, *"what was science fiction some three years ago is reality now"*, the camera moves to a close-up of a exhibition poster featuring a child's face, half of which has negroid characteristics, while the other half is albino.

These verbal and visual discourses combine to position the conTEXTualised viewer (as distinct from participants viewing the poster in the context of the Conference), to

regard this mutant vision as the antithesis of what progress or improving on nature means. For surely this would be every parent's worst nightmare, to be presented with a child so abnormal, so grossly disfigured.[2] In concluding the scenes at the Congress a salesman in his booth laughingly admits to camera, *"We're the biggest manufacturer of babies in the world."* This jocular remark reinforces yet again the 'unnatural' liaison being forged between technology and commerce. The reading offered to the viewer from this sequence is one of complete disjuncture, not the least because this is clearly a case of men doing women's business and science replacing the natural.

These are compounded when the invasive nature of the actual IVF procedures is graphically illustrated in another sequence, in which parallels are drawn between human and animal reproduction techniques. The scene opens with the gross visualisation of a farm worker inserting his plastic coated arm into the vagina of the cow to flush out fertilised eggs for transfer to less valuable animals. The setting, which includes the cow's steel holding-pen on a bare, cement floor, a flushing machine with a hose and nozzle insert and a farmhand in blue work-overalls routinely going about his job, all contribute to feelings of distaste and revulsion about such a grotesque and invasive procedure. In commenting on this scene the narrator says quite simply, *"All of these techniques are used on women"* The visual discourse is reinforced by direct to-camera comments from a variety of opponents of reproductive technology including feminist, and articulate anti-IVF campaigner, Gena Correa, together with a series of women who have unsuccessfully tried IVF and several male doctors who are opposed to reproductive technology for different reasons.

In contrast to science's usual 'objective' stance, when strenuous efforts are made to separate science from its context, "(s)cience is one thing, context another" (Gardner & Young, 1981, p. 174), those who are involved in this process become an integral part of its discourse. There is no attempt made to disguise the purpose of the programme. It is clearly designed to provoke a reaction against reproductive technology based on, its low success rate (10%), its experimental nature, its technologically-driven, rather than human-centred ethos, and the deleterious effects it has on women, both physically and psychologically.

What is presented, is definitely not an impartial, unbiased, apolitical text. Nor according to conventional TV science is it a 'scientific' text although various facts are presented in a documentary form which is supported by visual evidence. The perspective offered is a feminist one. Its clear purpose is to critique and discredit this particular science. It achieves this by employing a range of discursive strategies which firmly link the research area of reproductive technology with the masculine culture of science. According to McNeil and Franklin (1991, pp.129-146), the feminist critique of science has been especially productive in exposing this link between science and the discourse of masculinity.

This text's uncompromising form and content establishes it as one which fits neatly within Hartley's (1992) category of "propaganda". Hartley's plea in support of "propaganda", echoes Foucault's position in sanctioning anarchic voices of resistance, where there is a clear intention to destabilise dominant discourses and interrogate institutions. In the context of reproductive technology, Philp's (1985, p. 17) summary of Foucault's position is pertinent: "His [Foucault's] support is lent to those who resist

the subjugating effects of power: those, like some feminists, who refuse to surrender their bodies to the established practices of medicine."

2.4 The politics of reading texts

In discussing the meaning making potential of propaganda, Hartley (1992, p. 53) contends that, "propaganda is more honest than news ... because its form invites a different politics of reading."[3] This reference to "a different politics of reading" (p. 53) suggests that the onus for meaning making lies mainly with the social subject rather than the text. In assessing the significance of texts, such a statement, which implies significant reader power, should not be taken to preclude the idea that mainstream texts do not exert significant hegemonic power. The tendency of these texts is toward preserving the status quo while radical texts attempt to provoke change. These two textual extremes, the mainstream, popular text and the radical one, do not represent, nor have access to, equal power bases. The first has all the weight of cultural and institutional authority which means it has as its disposal all "the power of certain discourses ... to command assent" (Hartley, 1992, p. 52). The radical text or the voice of the "lunatic fringe" (p. 62), is infrequently aired or heard because it lacks access to any "organized power or institutional clout .... Thus the forces of truth are unequally balanced" (Hartley, 1992, p. 62).

At the same time Fiske (1987, p. 46) observes that radical texts which eschew anticipated cultural demands for entertainment and pleasure, run the risk of alienating viewers.

> (T)he conventions of [the] culture industry ... have to be taken into account in a theory of popular meanings within a mass culture.
> Social change in industrial democracies rarely occurs through revolution which is the sociopolitical equivalent of the radical text. (Fiske, 1987, p. 47)

Fiske's concern here is with popular culture's role in promoting social change. Power permeates through culture as discourse, and the popular, mass cultural mediums, such as television, film, radio and press, are the major purveyors and disseminators of culture. According to Allen (1992), television's impact is especially influential because it is so pervasive. It ranks, along with oral storytelling, as the "most prolific and important narrative medium in the world today" (Allen, 1992, p. 26). Television texts thus represent, one of the most significant sites for social change but instigating change requires of the text, that it balance both the demands of pleasure, and challenge, in the form of meaning making, for the viewer.

In relating these issues concerning the politics of reading, to science in its popularised television form, it is clear that science utilises the institutional power that its status affords it to co-opt and influence a wider culture. Such endeavours are part of science's attempt to preserve an institutional edifice that is elite, non-contentious, and incontestably systematic. It manifests on television as a reliance on a format which favours the uninterrupted 'talking head', an avoidance of overt confrontation between 'experts', and a masking of the reality of science as a process which is subject to uncertainties and vagaries (Gardner & Young, 1981). The resulting rigidity of form is symptomatic of a perceived need to control, limit and close down the excess of meaning which television inevitably generates (Fiske, 1987, p. 58).

Gardner and Young (1981, p. 179) make the point that the "rigid system of closure" required of science programmes, contrasts markedly with other less 'elite' genre types, which, in both content and form, assume a much greater degree of reader sophistication. Many of television's fictional representations, for example, are highly complex in narrative and visual style (Gardner & Young, p. 179). The same degree of latitude or 'slippage' is rarely observable in science, in either its typical discourse or in its popular cultural manifestations (Bell & Boehringer, 1989; Gardner & Young, 1981).

In addition to feminist texts some degree of relaxation in narrative form has recently become evident in one area of science. An increasing number of texts favouring open-ended formats are appearing, but these are almost exclusively reserved for programmes dealing with environmental issues. In such examples different perspectives are canvassed and often left partially unresolved, indicating that perhaps this area represents a different type of science, one that is more human-centred and perhaps more variable over time. The ABC's Quantum series has featured examples of environmentally contentious issues where meanings are opened up rather than closed down, but statistically such programmes remain the exception rather than the rule.

The other major popular culture area where the most interesting and challenging scientific debates are observable, is in science fiction. Commentators have drawn attention to the genre's subversive potential (Kuhn, 1990) and to a characteristic narrative flexibility which allows critique, though not always solutions, of problems relevant to western industrialised society. Common themes which recur are those

associated with environmental degradation (Logan's Run), dehumanisation and mechanisation (Metropolis, Brazil), scientific experimentation (The Fly, Flatliners), societal breakdown (Robocop) and isolation and alienation (Blade Runner) (Kuhn, 1990, pp. 15-18).

This may seem like a curious phenomenon, to propose that science and related societal problems are interrogated more directly and vigorously in fictional representations rather than the much lauded factual ones. Nevertheless researchers (Fiske, 1987; Hartley, 1992) premise that as a communication vehicle, fiction's particular form, and its tendency toward excess (especially prevalent in its television manifestations), breaks down the constraints controlling meaning and opens up textual spaces for readers. Fiske (1987) suggests an economic rationale for this; namely that the polysemy associated with popular texts relates to their need, as products within the consumer economy, to have universal appeal.

While there is clear evidence of science being interrogated in science fiction, its presence in fiction per se, does not guarantee scrutiny of science and its processes Indeed it is quite usual for science to be projected reverentially with its status used to authenticate the dominant discourses of other institutions. This is certainly the case in many fictional texts where law and science intersect. The police series Phoenix is one such example and for this very reason represents an ideal subject which will be reviewed later in this thesis. Particular aspects of law do attempt to align themselves quite closely with the scientific paradigm. One such area is criminology, (the study of crime and criminal behaviour) which is based on the science model of cause/effect with its notions of inevitability and predictability. Continuing social disruption,

articulated as the 'law and order' problem, indicates that there has been little success in this area, either in predicting or controlling crime. The problem according to some feminists (Smart, 1990, p. 73), is that criminology is over-reliant on science: "The problem is that science is held to have the answer if only it is scientific enough."

Another area where the law and science intersect decisively, is in the realm of forensic science. Significantly for this thesis, such representations form the basis for many fictional accounts on television including the previously mentioned police series, Phoenix. As a general rule fictionalised forensic examples are characterised by an adherence to a positivist scientific line. At base lies the notion that when enough facts are obtained by the specialist (scientist), the 'truth' becomes clear and the answer becomes inevitable. The ABC series Phoenix exemplifies this model and it will be considered as an example of the law/science nexus. The intertwining of these two discourses provides the site for interrogating how the second challenge to law is represented within popular culture.

CHAPTER 3

3. THE LAW ACCORDING TO SCIENCE

In the preceding chapters institutions and their constructed knowledge cultures have been examined. It has been suggested that particular institutions attempt to emulate or align themselves with science as a way of increasing their status. Affiliation with science represents an attractive proposition as it offers status, ready acceptance and little procedural scrutiny. Law justifies its own power to regulate and control on the basis of its objectivity, neutrality and being value-free; characteristics it claims derive from scientific principles. Closer inspection, by way of institutional theory, reveals an 'objective' facade rather than substance.

Commenting on this screen of scientificity, Naffine (1992, p. 44) agrees that "the legal idea of objectivity functions as a smokescreen to conceal the actual social content of law and the place of value in legal processes." The main challenge to law's 'objective smokescreen' has come from feminists, such as Naffine, who have argued against the possibility of there ever being a totally objective position from which to speak. Feminists argue instead, that there are "partial understandings ... which owe their existence to the particular, concrete experiences of the apprehender" (Naffine, 1992, p. 45). The re-inscribing of this issue, is illustrative of just one aspect of feminism's challenge to law.

3.1 The 'strange scientifico-juridical complex'

The challenge to law investigated in this chapter will centre on what Foucault (1991, p.19) describes as the "strange scientifico-juridical complex." This is the situation

where "(a)nother truth [science] has penetrated the truth that was required by the legal machinery." Foucault's concern here, is with science's intrusion or 'penetration' of law and the degree of influence it assumes over judicial decisions. For Foucault (p. 19), science's role is problematic chiefly because it complicates and diffuses the legal process: "Judges have gradually ... taken to judging something other than crimes, namely, the 'soul' of the criminal." But, perhaps law's relationship with science, which has increasingly become a reliance on science, raises other issues which are even more fundamental? For instance, when the legal and scientific discourses intersect, does the hierarchy of discourses which gives natural precedence to science, impact on the legal process? Could justice be a casualty in such circumstances?

The two discourses intersect most decisively where forensic or scientific evidence is involved. It is in this area that law's fallibility becomes most obvious and where the challenge to law's authority begins Miscarriages of justice are the public manifestation of the legal system's failure and, although not all 'miscarriage cases' emanate from scientific evidence, many do, and some of these are celebrated cases which have been widely publicised.[4] Wilson's (1991, p. 4) analysis of ten Australian miscarriage of justice cases, cites 'expert evidence' as a major problem in six of the cases examined. Bourke (1993, p. 124) agrees that "the unreliability of scientific evidence unjustly affects many criminal trials", though curiously, as she reports, "lawyers are generally unaware of the existence of the problem" (p. 127). This contrasts markedly with the public's perception of such occurrences. Higgins (1994, p. 137), in assessing the residual effects of the Chamberlain case for example, reports that it "had a negative impact upon the community's faith in the jury system and the reliability of forensic evidence."

This assessment stands in direct contrast to the legal fraternity's view of the case, where "the notoriety of Chamberlain has only served to distinguish it from other cases, so that it is now commonly thought of as an aberration, a 'one-off' legal mistake" (Bourke, 1993, p. 127). Bourke (p. 124) is one of few within the legal profession who regards the case "as indicative of a more extensive problem" involving scientific or forensic evidence. Another is feminist lawyer, Roxanne Mykitiuk (1994), who cites specific instances where science is used by law, both as support and then in opposition, depending on which legal outcome is desired:

> One of the things I have found fascinating about these cases is the construction and use of scientific evidence to support particular outcomes. That is to uncover the socially and legally constructed standard or norm which masquerades behind the application of scientific evidence....(C)ommonly in jurisprudence, scientific knowledge is regarded as an objective basis upon which to reach particular and determinative legal outcomes. However, we find the scientific explanation or understanding used in one case directly contradicted by its usage in another case. (p. 94)

These contradictions in law have been actively taken up by the media and re-presented in both fact and fiction genres. While there is general agreement that "no obvious blueprint for successfully challenging miscarriages of justice" exists, the media's contribution to the debate is seen as "important", if at times "unpredictable" (Zdenkowski, 1991, p. viii).

This so called "unpredictability" is more apparent than real though, as journalism has its own set of standard discourses. The illusion actually stems from the media's role which allows it, either to support a critique of the system, or support the status quo, which means in effect to "regurgitate the conventional wisdom about appeal systems

... that the accused has had his or her day in court, and so on" (Zdenkowski, p. viii). Whichever is the case, as this thesis proposed at the outset, the media's role is a discursive one, which permits it to challenge, or support law and its regulatory function.

Popular culture's fictional accounts of the law/science nexus, which include the law/cop/mystery genres, may show evidence of this challenge to law. Confirmation of such a challenge would be in the deconstruction of science's 'natural' hierarchical superiority, along with a repudiation of its discursive power to validate other discourses. The task will be to determine through textual analysis, how science's representations influence legal discourse. Does the discourse of science with its attendant claims of logic, objectivity and infallibility, tend for example, to overwhelm or inhibit the legal discourse to such an extent that justice is a casualty? The proposition will be examined using two texts where, within a legal context, science's role in law is a significant factor.

3.2 Fiction/Law/Science: A forensic sample - *Phoenix*

Fictionalised forensic examples, as a general rule, are characterised by an adherence to the positivist scientific line. They are underwritten by the notion that when enough facts are obtained by the specialist (scientist), the answer/ the truth becomes clear and inevitable. The ABC series Phoenix exemplifies this model. In this cop series, science is treated reverentially with tacit affirmation of its infallible status. By association it invests credibility on the institution it supports; the judicial system.

Phoenix, as part of the cop genre series, advertises itself as reflecting the 'real' world. It is heavily naturalistic in narrative detail, setting and dialogue. Its concerns centre on the serious masculine business of public life as dangerous, competitive and unpredictable. The forensic team, a husband and wife combination, Ian and Carol Cochrane, appear at various times throughout the series. They assist the police in collecting evidence at crime sites, provide hypotheses based on the evidence and submit the evidence to various testing procedures. When shown in the work environment, the pair are usually portrayed in white lab coats surrounded by scientific apparatus.

The characterisation of the senior scientist, Ian Cochrane, draws heavily on the stereotype of the 'crazy scientist' but any deliberate peculiarities, for example odd socks, remain at the insignificant level to ensure that his scientific judgement remains sacroscant. Carol Cochrane on the other hand, is portrayed as something of a feminist. A working mother, she stands somewhat apart from the overtly masculine culture of crude jokes, sexual innuendo, pubs and excessive drinking which characterise the police team. Her character also reveals evidence of intellectual superiority with wit and repartee being her standard response in most situations. In illustrating the role the forensic element plays in Phoenix, a typical scene from the second series, shown on ABC on 27/5/93, has been selected for analysis.

The extract involves the scientist, Ian Cochrane, testing the shoes of two detectives, to ascertain whether they were responsible for a young girl's precipitous leap from an upstairs window during an arrest. The young girl has been left paralysed and the odds are stacked against the detectives being able to prove their innocence. In a previous

episode via omniscient positioning, the viewer has been privy to the 'truth' of the situation and knows the detectives are innocent. In this scene, as the detectives hand their shoes over to Ian Cochrane for testing, he remarks that if they are not the right ones it will go in his report. The purpose of this seemingly unprovoked comment becomes apparent in the exchange which follows. It aims to establish scientific objectivity.

(Ian) *"Jock suggested I take extra care in case I'm biased toward you. I mean what does he think I am..."?*

(Carol- humorous aside) *"Human"?*

(Ian) *"If you were my own mother, God help you, I'd do exactly the same as I always do"*

(Carol-smile and laugh) *"With careful incompetence"*

(Ian-good humouredly) *"Will you shut up"*

The focus of this extract is clearly to pre-empt concerns of bias against the scientist Ian Cochrane. It is framed as a personal issue but at stake is the more general one of science's credibility. Such a pre-emptive tactic, represents in media terms, a classic strategy of containment. By overtly raising the issue of bias, the episode acknowledges and at the same time counters, possible viewer concern about Ian's 'objectivity' in the face of a known friendship between himself and the detectives. Left unresolved the issue might lead to a more general query about science itself and undermine science's validating role in the series. Within the verbal discourse, Ian Cochrane explicitly denies subjective involvement: *"I'd do the same if you were my mother"*, implying that it is science's own methodology which guarantees his

impartiality. This denial of subjectivity is fundamentally regressive for, as Bleier (1986, p. 63) observes, "scientists cannot simply hang their subjectivities up on the hook outside the laboratory door." This narrative also signals that the truth will out, in that the results of the tests will vindicate the detectives, because science has been constructed as the method of deriving truth from the facts and experimental procedure. In this instance science provides the answer via a process Ian Cochrane calls "*analysing the footprint choreography*".

The actuality of this extraordinary procedure is demonstrated later in the episode when a map with various footprints and a transparency, are used to explain the process to the detectives. Cochrane obtained the results by, in his words, *"staring through a polylight and squaring it with an electrostatic lifter."* These 'dance' maps, with their dots and crosses, provide conclusive proof that neither detective was involved in the girl's jump from the window.

In this short scene the verbal and visual discourses coalesce to produce an unambiguous pro-science discourse. Visually the images of the laboratory, the white coats, scientific paraphernalia and glasses for Ian Cochrane, merge with a script heavy with scientificity, to produce what is clearly the dominant discourse. The synchronisation of the image, 'the dance map', with the verbal explanation given by the scientist, "makes it appear as if the images 'speak for themselves'" (Brunsdon & Morley, 1978, p. 62), and require no further interpretation. The discourse is given additional weight by the process of inscribing the viewer into the film space (p. 64). Seeing the dance map through the eyes of the scientist, Ian Cochrane, in a close-up displaying the graphics and detectives names, vouches for the truth and validity of the

material. This combination of processes reinforces science's image as an infallible, objective and value-free knowledge system. The scene's closure, which is signalled by a shift of focus to a wide shot includes a reinforcing verbal summation, *"this means you're in the clear."* The explanatory comment is offered by the female scientist, Carol Cochrane, indicating perhaps that the feminine is required to decode the language of men's science, for the general audience.

This sequence's positive and incontrovertible outcome stands in marked contrast to what happens in the rest of the narrative, where things are seen to go horribly wrong for the police team. Drug busts fail, information goes astray, informers get killed, and factional rivalry within the team eventually undermines the success of the operation. Within this maelstrom, science remains intact and inviolate and by association gives credence to the judicial institution it supports. The discourse of science being propounded here, is a wholly traditional one which refuses to acknowledge either the possibility of scientific error or of ambiguity.

On Bourke's (1993, pp. 124-125) evidence, law perpetuates this discourse when it fails to recognise, "the existence of unreliable scientific test evidence:[and] its extent across a whole range of scientific tests." The associated tendency of lawyers to regard failures of the judicial system, based on forensic evidence, as mere "aberration(s)" (Bourke, p. 127) has also been criticised. Wilson's (1991, p. 4) study of Australian examples where miscarriages of justice had occurred, identified "expert evidence" as a major problem in over half of the cases examined. In the Chamberlain case alone, Wilson lists six separate problem areas, three of these concerned the 'evidence', with queries about its "partial", "circumstantial" and/or "inconclusive" nature. Wilson's

examples, seem to suggest a less than perfect 'fit' or accommodation, between the intersecting discourses of science and law.

How far do these aberrant legal outcomes result from the hierarchy of discourses which gives natural precedence to science? Could it be the case, that the discourse of science with its claims to logic, objectivity and infallibility, tends to overwhelm or inhibit the legal discourse; and is justice a casualty as a result?

3.3 Science Rules: O.K?

Some support for this claim can be found in the special provisions allowed expert witnesses in respect of giving testimony. Normal rules of evidence exclude hearsay, but this provision is waived for expert witnesses called to testify on the basis of their possessing special knowledge. A further exemption applies too with regard to offering opinions. A relaxation of the normal procedural requirement, which permits witnesses to report only on observed facts, allows experts to extrapolate, hypothesise, infer and make suggestions based on opinion rather than actual observation of an event. In respect of the social sciences, Konopka (1980, p. 132) asserts that under normal circumstances "most of the sources of information from which a social scientist derives an opinion would be inadmissible as evidence." He includes all data derived from census and survey results in this category.

Also regarded as problematic is the traditional attitude of deference to, and regard for, the role of the expert. Science's privileged position in Western society guarantees its members high credibility in respect of matters relating to rationality, objectivity and value-free judgements. All characteristics which are highly valued and sought after

by the law in its administration of justice. Expert pronouncements are afforded special status through what Cassidy (1991, p. 64) terms "author invisibility", which gives subjective opinions the appearance of objective statements of fact. Bourke (1993, p. 126) notes in her study that an "aura of scientific certainty causes lawyers and jurors to operate under a shroud of assumed omnipotence of science." Aitken (1994, p. 244) supports this view advising that "(p)art of the danger of expert evidence lies in the misleading objective appearance of the expert witness." Post (1980, p. 174) similarly comments on the "opaque" nature of evidence which is unwittingly caught up in the social prestige of the expert.

Within this system, science also constructs its own hierarchy which certifies experts according to a set of criteria determined by the institution. This hierarchy of expertise operates to discount other less credentialled opinions and/or to disqualify non-scientific discourses. Samuels (1994, p. 151) notes how the illusory process works: "(F)orensic experts, with a string of qualifications after their name, can be seen by the jury as infallible and omnipotent, when they may not be." In the Chamberlain trial, where specialist forensic scientists were an integral part of both the prosecution and defence cases, special emphasis was placed on academic and other qualifications as a way of establishing a clear superiority in the scientific hierarchy. For example Professor Cameron, whose evidence of a bloodstained handprint on the jumpsuit led to the re-opening of the case, is regarded as, "one of the leading forensic experts in the world" (Johnson, 1984, p. 95). In court, his pre-eminence in the forensic field is evidenced by a list of his previous accomplishments: "So long was his curriculum vitae that Sturgess handed a typed copy to Galvin, rather than read it all out" (Bryson, 1989, p. 306).

In the retrospective decision that finally cleared the Chamberlains, Justice Morling, using legal determinants, concluded that it was the Crown's eminent forensic scientists who had made errors of judgement in their expert evidence (Young, 1989, p. 272). Young's review of the findings of the Morling Inquiry, also points to some fundamental flaws in science's revered 'objective' methodology:

> Bias appears to have been a factor influencing the direction of the errors .... Prejudice apparently blurred the vision of scientific objectivity. Too many forensic experts simply failed to practise a basic principle of modern science: to subject all opinions to tests that are designed, if possible, to invalidate them. (Young, 1989, p. 272)

By contrast, the forensic work of the defence's less well credentialled scientists was totally vindicated: "Incredibly the Morling inquiry was a triumph for these minor scientists over those with vastly superior reputations [emphases added] in the forensic field" (Young, p. 273). These examples are illustrative of how the discourse of science, in addition to having special status within the legal system, also maintains its own hierarchy of expertise which can affect a judicial outcome.

The adversarial system is also seen as problematic in respect of forensic evidence. Any real notion of impartiality on the part of the expert is destroyed, according to Hogg (1991 p. 193), by an adversarial process which incorporates the so-called independent expert witness into "the partisan outlook of one or other of the adversaries."

3.4 Institutional Interrogations: The case of *Evil Angels*

In setting out the various contentious points surrounding the science/law nexus it is clear that these sites of contestation offer ample opportunity for law to be interrogated via science. A film text such as Evil Angels is useful in how it interrogates many of these sites and exposes in the process, the nature and variety of discourses which support both law and science. These range from a critique of science's sexist discourse, to an exposé of the institutionalised practices which empower the expert and discount alternative discourses through exclusion of the non-expert.

Based on Bryson's (1985) novel Evil Angels, the film adopts a similar pro-Chamberlain position and approaches the forensic evidence from that partisan viewpoint. The film's ideological stance, positions it oppositionally to both law and science's discourses of certainty. Part of the enterprise to re-position alternative discourses, requires the erosion of credibility of the forensic evidence. In the opening scene the ideological position is enunciated by juxtaposing the pro-Chamberlain discourse against a number of conflicting anti-Chamberlain elements, the significance of which, becomes apparent later in the text.

The film opens in Mt Isa prior to baby Azaria's disappearance, and within two minutes, in five separate scenes, attention focuses on matters vital to the ultimate determination of innocence or guilt. Aspects of the family, the religious community and some crucial hints about character, such as Michael's obsession for photography and Lindy's unconventionality, are all framed positively. This series of images work pre-emptively to counter the myriad extra textual myths associated with the

Chamberlain's much publicised court cases. This same counteracting strategy occurs frequently throughout the film. For instance, the film uses groups of 'ordinary' people commenting on the case, as a disruptive narrative device. Presented as 'public opinion' are people at a dinner party, at a bowling club, on a pub verandah, packing sandwiches and walking dogs; all offer 'opinion snapshots' on the Chamberlains and display in the process, varying degrees of ignorance, intolerance, prejudice and bigotry. These ill-informed and illogical opinions have no narrative weight and are easily discounted though, as we spectators, through the "position of spectatorial privilege" (Fiske, 1987, p. 25), are privy to the 'truth' of the situation; we have 'seen' the dingo enter the tent and leave with something in its mouth.

It is important to recognise this strategy at work in the text because the same discrediting process is used to erode the credibility of the forensic evidence. In its systematic undermining of the law/science nexus, Evil Angels represents a rare media/legal instance of discursive discrediting.

3.4.1 Representation of forensic evidence in *Evil Angels*

The representation of forensic evidence occurs primarily in the trial sequence with a variety of discrediting strategies being utilised. The first forensic scientist presented is biologist, Joy Kuhl, whose evidence of blood in the car, and particularly her assertion that foetal blood was present, was vital to the Crown's case: "The fact that Kuhl's evidence dominated the proceedings in the second inquest, the trial, both appeals, and the inquiry demonstrated the fundamental importance of her testimony" (Young, 1989, p. 182).

Kuhl is cast as a slightly frumpish, self-satisfied woman who bears more than a passing resemblance to the accused, Lindy Chamberlain. Lindy acknowledges the visual ambiguity, "*the outfit, the polkadot dress, practically the same as mine, not to mention the hairdo*" After hearing Kuhl's testimony, Lindy is seen to react to her (Kuhl) personally, "*fluttering her eyes at the jury*", and adds rather crudely; "*I reckon she's got something going with that copper too*"

Lindy's role as the victim, gives her vituperative comments narrative motivation and positions her character in a preferred position. By contrast Kuhl's demeanour and language, suggest a subjective, personal investment in her evidence which severely detracts from her objective standing as a scientist. For example under questioning she says of the tests she carried out: "*The buckle gave me very, very strong positive reactions to blood*" and, "*the spray pattern under the dash gave me a very strong positive reaction to foetal haemoglobin*" Both the visual and verbal discourses here work to position the spectator as observers to Kuhl's partiality in her close physical attachment to her evidence. Subjectivity as opposed to objectivity is constructed in her actual holding of the camera bag as she gives her evidence.

Under cross-examination Kuhl's credibility is further weakened when she admits, with obvious discomfort, that the actual test-plates used in the experiments have been destroyed. A combination of sound effects, an audible gasp in the courtroom, and camera work, a closeup of the jury showing surprised faces, frames the scene to Kuhl's disadvantage In her subsequent appearance in a hotel beer-garden in the company of the prosecuting police, the film clinches Kuhl's lack of credibility as a

scientist/witness. In this scene Kuhl's speech reveals a personal antipathy toward Lindy based on the most irrational of reasons, emotion coupled with claims of black magic and sorcery; "*She just stared into my back I could feel it. She just stares you know. She's a witch you know!* " Although such a suggestion in this context is seen as quite bizarre, the script here overtly draws attention to an extra textual discourse circulating at the time: "The spectre of Lindy as witch was rarely articulated, yet the notion percolated just beneath, constantly informing the imagery which pervaded the discussion" (Johnson, 1984, p. 91).

In this segment involving Kuhl, scientific credibility is undermined by activating a sexist rhetoric which postulates that the discourse of woman as scientist is antithetical (Haraway, 1989, p. 281). Both the verbal and visual discourses systematically corrupt the 'aura of the expert', culminating in Kuhl's absurdly anti-scientific reference to Lindy as a "witch." Indeed the composite portrayal of both women in this sequence could be categorised as sexist, as it reinforces stereotypical notions of women's behaviour. Displayed are instances of gossip, petty jealousies, and judgements based on superficialities and irrationality. With Lindy such strategies may work to humanise and round out her character but with Kuhl they are clearly designed to discredit her as a person with any scientific credibility.

A combined attack on Kuhl, via her gender and psychological make-up, counteracts her potential as a scientific witness. A similar technique undermines another important expert witness, Professor Cameron, but significantly, it is not done on the basis of his gender. Cameron is shown to have a character defect, a personal and professional arrogance, which makes him vulnerable as an expert witness. In his

appearances another technique for discrediting the forensic evidence is employed and it involves setting up obvious discrepancies between the visual and verbal discourses. The initial framing of Cameron as the traditional expert is conveyed by technical and representational codes including casting, dress codes and speech patterns. (Fiske, 1987, p. 5). Camera shots from below construct Cameron's aquiline profile as arrogant and supercilious while his cultivated and deliberate speech patterns activate a discourse of superiority based on class with colonialist overtones. Cameron's theatricality's, his staging for effect, with his suggestion of human involvement: *"There is evidence to suggest an incisal wound around the neck. in other words a cut throat*!", is accentuated by a deliberate closeup of his face which characteristically reveals emotion, whereas 'true' objectivity would necessitate a mid-shot.

The actual discrepancy between verbal and visual discourses occurs when Prof Cameron attempts to demonstrate via "*ultra violet photography*" the presence of a handprint on the jumpsuit. The visual discourse records a murky, indistinct, ambiguous image which is at variance with Cameron's confident assertion of "*the impression of the hand of a small adult.*" In such a hierarchy of discourses the visual tends to take precedence and the cut away shot to a female journalist adds verbal support with the comment, *"If that's a hand I'm a virgin "* The spectator is here positioned to favour the commonsense view over the expert scientific opinion, whereas in the Phoenix example, the perfectly coinciding visual images draw the spectator into an easy acceptance of science's 'truth'.

The framing of the final sequence has the verbal discourse take precedence, as Cameron's credentials as an expert are queried through Lindy's comments on his

faulty evidence in the celebrated "*Confait case*." During the cross examination both verbal and visual discourses combine to discredit Cameron. This reaches a high point in the concluding scene, purporting to be television news footage, when in a grainy media shot with voice-over, the verbal discourse indicates that Cameron's evidence has been *"completely discredited."* The high modality and truth status of news, invests this scene with credibility and signals that Professor Cameron's fall from grace is complete. This sequence interestingly frames the media's 'truth' above that of the scientific expert.

3.4.2 Excluded knowledges

While it is the hierarchical nature of institutions such as science, which gives experts their status and credibility, the same system operates to disempower, through exclusion, those whose skills and knowledge are outside the paradigm. McHoul and Grace (1993, pp. 15-16) refer to these as "'naive' knowledges, because they 'are located low down' on most official hierarchies of ideas (Foucault, 1980a: 82). Certainly they are ranked 'beneath' science." A clear illustration of this process occurs when the text comments on the exclusion from the trial of the real 'experts', the Aboriginal trackers. According to Young (1989, p. 256), "(t)he blacktrackers had no doubt that the tracks proved a dingo had seized Azaria from the Chamberlain's tent", but the authorities continued to regard this information as 'unreliable'. Bourke (1993, p. 190) also nominates this as a "classic example of the aura of science" at work. "(N)otwithstanding significant eye-witness evidence, Aboriginal tracker evidence, a recent history of dingo attacks, and the prior concerns of the ranger, the scientific evidence still prevailed." [emphasis added].

In the film, a sequence involving talk-back radio, is used to demonstrate how Aboriginal cultural superiority in this sphere, is not acknowledged, validated nor respected. When a female radio announcer queries on-air, why none of the trackers has been called to give evidence, an aggressive male caller offers the standard racist response: *"Look lady, you can't believe those bludgers. They're always drunk. You know that!"* In addition to its obvious racist implications, this short sequence graphically illustrates the unequal struggle different discourses have to command assent. On display are the methods customarily employed to discredit and inhibit non-credentialled discourses on the basis of their lack of a 'scientificity'. Graycar and Morgan (1990) in summarising Howe's (1989) view on the media's role in the Chamberlain case, conclude that:

> (T)he scientific evidence completely displaced the eyewitness accounts and in particular, the evidence of an Aboriginal tracker .... Howe suggests that the media's failure to report the evidence of blacktrackers was also 'profoundly racist'.(p. 265)

Higgins (1994, p. 140) in her recent review of the press coverage of the case, noted the same hierarchy in operation, and concluded that it "valorised the evidence of (forensic) science over eye witness accounts and the evidence of black trackers."

Another technique used by the film to disrupt science's credibility occurs when science is represented as a highly specialised and complex discourse. The resulting level of incomprehensibility relates to what Cassidy (1991a, p. 63) refers to as the exclusivity or "closed shop" which characterises each discipline. In several instances science's 'foreign' language is targeted for ridicule because of its elitism and lack of

relevancy. For example, a witness who is an expert on blood, is shown droning on incessantly about "anti-serums", "anti-haemoglobins", "anti-bodies", "alpha" and "beta molecular chains" while a camera shot of the jury indicates puzzled non-comprehension. Bourke (1993, p. 141) confirms the accuracy of this representation: "Professor Boettcher ... spoke of having seen many jurors' and lawyers' eyes 'glaze over' when confronted with scientific evidence in court." To reinforce this point, and raise the more general problem of a jury's ability to deal with highly technical evidence, a scene including law students discussing the Chamberlain case, is presented. One puts the commonsense view of the problem; *"If highly regarded experts can't agree, how are the jury supposed to make a conclusion?"* On offer here, is an alternative competing discourse about jury competency in specialised areas. The proposition being advanced, is that some legal cases are just too specialised and too complex for the average person to comprehend and make a judgement on.

The media too has difficulty breaking down and re-packaging, the mass of scientific material offered as evidence. The scientific terminology is constructed as problematic, with journalists grappling to understand and explain specialist terms such as 'ouchterlony', 'orthentology' and 'electrophoresis'. While such instances could be read as a critique of journalistic practices, in the context in which they are employed in this film, the discursive processes tend toward encouraging an interrogation of science. Both the verbal and visual discourses construct science as something abstruse and irrelevant. For instance during the presentation of scientific evidence, a shot of the media room shows bored journalists yawning openly as one asks rhetorically: *"Jesus, how many more days of this?"* Another scene in a newspaper office has the editor telling another journalist: *"I'll give you ten bucks if you can get*

haptoglobin into a headline!" while another reports on *"the almost incomprehensible forensic evidence."* This discourse of science being 'too difficult', and something antithetical to commonsense, extends to the jury room where members argue about the evidence. *"Can we sort out the blood thing first before we go any further?"* says one. The response from another jury member reinforces the visual and verbal points made earlier. *"Forget the blood, none of us understands anything about that!"*

The media's inability to critically engage with and comment on the scientific aspects of the case, may appear an innocuous omission but as Wilson (1991, p. 10) observes both "media pressure" and "media stereotype/prejudice" are involved in many miscarriage of justice cases, including the Chamberlain case. Pugliese's (1991, pp. 72-73) print-media textual analysis of the Tim Anderson/Hilton Bombing case, argues that the media draw from a range of "rhetorical and narrative strategies" in constructing a "discourse of journalism", and in cases of this type, they customarily resort to "the rhetoric of criminality." It seems likely that a media that is unable to evaluate and make distinctions between the significance and value of scientific evidence presented, will favour the standard journalistic discourse: "We're supposed to be reporting the prosecution case, right?", is how one journalist perceived his role, in Evil Angels (Bryson, 1985, p. 401).

As has been noted earlier, the coupling of law's adversarial system with expert evidence, often results in outcomes which are far from just. According to Hogg (1991, p. 192), the reason for the anomaly lies within the system itself: "The adversarial process tends to encourage the suppression of evidence favourable to the accused and the shoring up (if not manufacture) of evidence suggestive of guilt."

Hogg further contends that the offering of "expert, scientific evidence" in no way assists in arriving at the 'truth' because this type of evidence is only given to secure a conviction. In fact the system itself encourages the so-called "independent expert", to become incorporated into "the partisan outlook of one or other of the adversaries" (Hogg, 1991, p. 193).

The film acknowledges the problem of partisan evidence by nominating the Crown's two expert witnesses, Joy Kuhl and Professor Cameron, and allowing them extra screen time. Their objectivity as witnesses, is seen to be compromised because of their close alignment and sympathy with the prosecution case. By contrast, none of the defence's expert witnesses are nominated individually, which tends to guarantee their scientific impartiality. This affords them no advantage in the hierarchy of discourses however, as the lack of nomination signifies their narrative impotence. In narrative terms this is consistent with the lack of impact their evidence had on the eventual verdict and fulfils the film's narrative logic and audience expectations, in respect of the rationale required to secure a guilty verdict.

Evil Angels, as the fictionalised account of the Chamberlain case, succeeds in exposing the nature and variety of science's discourses within the legal process. In so doing, it invites interrogation of a particular encounter between law and science where justice is seen to be a casual. According to research by both Bourke (1993), and Wilson (1991), cases with similar outcomes are not uncommon. Some see a remedy in making science more reliable (Bourke, 1993), while others demand more accountability and scrutiny of science, as in the USA Supreme Court, 1993, Daubert case (Richardson, 1994). The problem also fundamentally concerns the way

knowledge cultures and institutions are constructed and naturalised in society via a process which valorises and credentials science above other "'naive' knowledges" (McHoul and Grace, 1993, p. 15). Bourke (1993, pp. 126-127) explicitly acknowledges this, as a problem confronting law: "Twentieth century dependence on science and technology ... has created an aura of scientific certainty which pervades the whole of society, and no less lawyers."

3.5 Outcomes

Popular culture's contribution to this debate, based on an analysis of Phoenix, indicates that science does indeed act as an infallible adjunct to law, aiding and abetting the validation of its discourse. Despite evidence of substantial problems in the forensic and scientific field (Aitken, 1994, Bourke, 1993; Samuels, 1994; Wilson, 1991), science continues to be represented in the legal context, as the epitome of objectivity, rationality and infallibility. Bourke suggests that a review of science's role must begin by acknowledging that discipline's subjectivity:

> Just as law incorporates policy and value laden decisions, so too does science .... The basis of the education should be to develop an appreciation that, at its best, scientific 'proof is a default option'; at its worst, science provides answers that are 'simple, neat, easy - and wrong'. (1993, p. 193)

Ultimately representations such as Phoenix are regressive as they constrain rather than provoke meaning. Craven (1994, p. 10) could well be referring to this text when he comments that: "Once again, the text of popular culture seems primarily to amplify rather than challenge existing 'common senses' about national and social relations." Certainly a challenge to law does not originate from this source.

Texts such as Evil Angels by contrast, in acknowledging the contentious nature of the law/science nexus, allow space for alternative interpretive accounts to form and circulate. In offering "oppositional discourses" (Fiske, 1987, p. 47), such texts suggest possibilities for change. Fiske's view is that social change occurs not "through revolution" but:

> as a result of a constant tension between those with social power, and subordinate groups trying to gain more power so as to shift social values towards their own interests. The textual equivalent of this is the progressive text, [emphasis added] where the discourses of social change are articulated in relationship with the metadiscourse of the dominant ideology. (p. 47)

Clearly such a mainstream text as Evil Angels, with its progressive potential, represents a window of opportunity through which change may begin to occur within the contested area between science and law. Certainly in its critical appraisal of the law/science nexus the text sanctions a challenge to law's authority.

CHAPTER 4

4. LAW AND FEMINISM

4.1 What Difference does (Gender) Difference Make?

This chapter examines law from a feminist perspective. This facilitates a review of law as an institution, and permits the testing of the validity of its claims to "rationality, neutrality and objectivity" (Graycar, 1990, p. vii). Feminist analyses began to impact on law in the 1970s, resulting in what Graycar (p. vii) describes as "an exciting array of new works informed and inspired by the insights of feminism." For the institution of law it represents a further challenge to its authority.

The "insights of feminism" provide a particular vantage-point from which law's hidden discursive strategies may be located and examined. It also suggests possible recuperative measures or legal reforms, the intent of which, is to insert women into the legal frame. Several of the reforms which have resulted from feminist initiatives, will be reviewed in the light of recent feminist concerns that "legal reform has achieved less for women than feminists had expected" (Bartlett & Kennedy, 1991, p. 2).

An analysis of relevant television texts will be undertaken to gauge the extent of feminism's impact on law within the context of popular culture. With the knowledge that media discourse itself has been influenced by feminist concerns, referred to by Tasker (1991, p. 86) as "(f)eminism's rediscovery of the popular, this 'looking again'",

there is an expectation that some texts will recognise and acknowledge gender as a culturally significant issue.

Within the same texts, using a similar analytic process, law's representation as an institution will be similarly examined. Several researchers (Cassidy, 1991b; Rowe, 1988) have observed that the inadequacies of individuals involved in administering the law (lawyers), seldom generalise to a critique of law the institution:

> Despite the often unsavoury image of lawyers as money-grubbing mercenaries which is conveyed by the mass media, the vision of the system of 'the law' which they operate is markedly different. (Cassidy, 1991b, pp. 87-88)

This observation is in line with Smart's (1991, p. 11) contention, which relates to both the institutions of law and science, that, "practitioners may fall short of the ideal" without that in any way reflecting adversely on the institution itself. This tendency to attach fallibility firmly to the individual as a way of deflecting and limiting a more generalised critique of the institution may be observable in the popular cultural texts selected. If this is the case it will fit with the overall contention of this thesis that the 'ideal of law', manifest as law the institution, is seldom challenged either in its social context or in its fictional representation.

4.2 Law from a Feminist Perspective

Law, like science, masquerades as a gender free discourse. Even at a superficial level law asserts this with its signifying iconography of a blindfolded woman, who with sword and scales dispenses justice supposedly without fear or favour (Naffine, 1992, p. 48). The irony of this signifier is obvious to feminists. Noted criminal barrister

and television writer, Helena Kennedy, signals it semiotically in the title of her confronting BBC drama series on the law, Blind Justice.

Another irony emanating from this figure is an empirical one. It is a fact that very few women actually dispense justice in the sense that very few women ever gain judicial appointment or attain its equivalent status within the law. This incongruity is noted in a Report by the Senate Standing Committee on Legal and Constitutional Affairs (May 1994) on Gender Bias and the Judiciary:

> Membership of the judiciary in Australia is remarkably HOMOgenous. [emphasis added]. Judges are overwhelmingly male, former members of the Bar, appointed in their early fifties, and products of the non-government education system .... in the federal sphere, six of the seven judges of the High Court are male .... Thirty-two of the thirty-three judges of the Federal Court are male Similar observations may be made of the State-court system. (pp. 91-92)

The Report (1994, p. 93) notes that there is "a vast disparity between the proportion of women in the population and the proportion appointed as judges " The imbalance is even more remarkable given the current demography of the law profession. According to recent statistics, fifty per cent of law graduates are women, while women now make up a quarter of the entire legal profession (pp. 93-94).

The absence of women from positions of power within law's institutional hierarchy is more than just statistically significant. It exposes not only the inherently subservient position from which women must make their claims, but it also makes apparent the concomitant nature of both the legal and masculine discourses. In nominating the characteristics of the abstracted, exnominated legal subject, Naffine (1992, p. xi) discerns that law presumes a quite specific and definable person: "(T)he human being

of legal thought .... he is a man, he is a middle-class man, and he evinces a middle-class style of masculinity" (p. xi). Naffine concludes from this that, "(l)aw and the man of law are *simpatico*" (p. xii). In other words, the discursive practices of both discourses coalesce seamlessly without disjuncture and meld together to present law as an institution that is natural, universal, value-free and above all, gender-neutral.

The patriarchal underpinnings that support law and other similar institutions and their practices, become most apparent with the application of feminist theory. Feminist criticism aims to refocus the gaze, "becoming sensitive to what often goes unnoticed, becomes naturalised, or is taken for granted within a sexist society" (Kuhn, 1982, p. 73). Application of Kuhn's oft-quoted maxim, "making visible the invisible" (p. 73), is clearly pertinent with regard to drawing critical attention to the few (lack of) women presently occupying judicial office.[5] This situation is commonly explained as merely reflecting society's norms in that power and public life 'naturally' equate with the masculine.

The example of gender imbalance in the judiciary represents an uncomplicated case of bias against women, and can be addressed and possibly rectified through affirmative action policies such as those recommended in the Senate's Report on Gender Bias and the Judiciary (1994, p. 105). More intractable and resistant to reform, both because it forms the basis of legal discourse and because it is more difficult to particularise, is the patriarchal underpinning that supports law in its institutional form. Naffine (1992, p.10) observes that "(l)aw treats as axiomatic the subordination of women to men: it is culturally a male institution which serves to ensure that men remain the dominant sex."

4.3 The Possibilities for Reform

Feminists have proposed various strategies aimed at disrupting the hegemonic control and influence which accrues to law as a result of its powerful alliance with patriarchy. Suggestions have included calls for: the development of a separate 'feminist jurisprudence'; the implementation of affirmative action in the appointment of more women judges; the mandatory introduction of gender studies to law school curricula and the re-education of the judiciary in issues of gender awareness. (Senate Report on Gender Bias and the Judiciary, 1994, Chapter 5). All of these proposals posit reform as being possible from within the legal system.

How viable is such a project though, bearing in mind law's historical propensity to accommodate and incorporate the 'new' into its already established knowledge system? De Laurentis (1988, p 8) refers to this tendency as "institutional recuperation", while Smart (1991, pp. 16-17) notes in respect of law, how its "colonisation" of the "psy" disciplinary regimes in the 19th century was seen as justification for subsequent legal intrusion and control of a whole range of new areas. From this perspective then, any appeal to law to redress the balance would seem likely to be counterproductive. It would merely replicate and reinforce the status quo without any challenge to the institution itself. Certainly this is Smart's (1991, p. 89) view: "Law reform per se preserves law's place in the hierarchy of discourses which maintain that law has access to truth and justice." Naffine (1992, p. 8) likewise is sceptical about reform from within the system: "There is little point in seeking to improve women's position within this masculine legal framework: it has no room for women. What is needed is social revolution, not reform."

However, by placing gender on the legal agenda and instigating reform through legislative channels, some important changes have been achieved by feminists. Most of these changes have been effected by an appeal to either the equal or difference position. Inherently though, the debate is reactionary because both positions are advanced as being mutually exclusive, which means that advocating one means denying the other. So although some measure of reform is achieved it is often at substantial cost in another sphere. These problems become apparent when the positions are examined more closely.

4.4 Examining the Equal/Difference Debate

The equality argument raises problems because it is predicated on using the male as the comparative standard. Advocating this position inevitably invests the 'he' with the status of the norm while disregarding the structural inequality from which women make their claim. This 'sex neutral' position forms the basis for anti-discrimination legislation and has clearly been important in specific areas. Frug (1992, p. 32) points to its success in precipitating the "break down [of] economic, employment, and educational barriers that explicitly prevent either sex from acquiring the benefits available to the other in society."

Unfortunately because the position is premised on a 'gender blindness', its impact, besides supporting "the power imbalance of the status quo" (p. 33), also countenances and indeed has facilitated anti-discrimination cases by men against women. Frug (1992); Graycar (1990) and Smart (1991) all comment on the 'backlash' phenomenon where the "'ideology of equality' has been appropriated .... [and] harnessed as a

weapon in the battle for the maintenance of male domination" (Graycar, 1990, p. 58). Empirical evidence cited by MacKinnon (1984, p. 83) supports this assertion: "Almost every sex discrimination case that has been won at the [US] Supreme Court level has been brought by a man."

In requesting equal treatment women are in effect, asking to be judged and treated like a man. While this procedure accords perfectly with the law's preferred methodology, "of reasoning by analogy" (Naffine, 1992, p. 50), applying the legal principle 'of treating like cases alike' destines women to be disadvantaged because the principle must disregard inherent structural inequities.

The difference position offers an antithetical spin on women's difference, presenting it as a claim based on unique and positive features which centre around biological characteristics. This strategy immediately raises the problem of essentialism in its all-encompassing assertion that it is women's biological functioning that sets them apart from men. While certain gains for women have resulted from using 'difference' criteria legislation, (for example maternity leave entitlements), the necessity to categorise women as a uniform, albeit 'different' group, remains fundamentally problematic. As Frug (1992, p. 33) states, "the dilemma of difference" lies in the fact "that deploying commonalities among women unavoidably embeds such traits within [all] women" (p.36). In the longterm the problem that ensues is that all women will not fit a designated category, whereas 'justice', (the law), depends on women as a group being able to be matched and fitted to a pre-determined set of criteria.

4.4.1 General Problems with the Difference Position

The situation is most clearly demonstrated in the 'special' treatment women receive in respect of certain medical conditions which are predicated on biological difference. Smart (1991) notes how both science, and by association law, work from a traditional premise that problematises women's bodies in order to control and regulate them. The medicalisation of a situation or condition based on biological difference means, for example, that a condition defined as 'post-natal depression' becomes a legitimate legal rationale when re-inscribed as 'infanticide'. This nomenclature change in turn reclassifies this particular type of 'murder' as specifically a women's phenomenon.

Smart (1991, p. 95) cites infanticide as just one example where "the law has readily abandoned judicial criteria for judging guilt in preference for the medical discourse on insanity." The Chamberlain case is one instance, where, in theory, infanticide might have been considered a 'reasonable' defence for Lindy Chamberlain. According to Young (1989, p. 158), one of Lindy's supporters, a Senator Mason, "thought it was ironic that Lindy continued her incarceration because she refused to plead guilty to infanticide", implying that if she had utilised what the legal system offered, the law would have worked and justice would have been seen to have been done.

An overriding criticism of the approach based on difference is that it perpetuates the notion of woman as victim, particularly as a victim of her hormones. For example, when the ill-defined and ill-understood condition Premenstrual Tension (PMT) or Premenstrual Syndrome (PMS) is used as a defence or in mitigation, it tends to reactivate stereotypical images of women. These images, which have a long historical record, are of mercurial, often violent women held captive by their hormones. (Eastel,

1991). The concern is that utilising these stereotypes reinforces a tendency to categorise women according to their sexuality.

In furthering this argument MacKinnon (1984, p. 86) cites the law's "special protection rules" for women as concrete evidence of systemic domination by an all-powerful patriarchy.[6] From the perspective of MacKinnon's "dominance model" (Frug, 1992, p. xv) a defence proposal based on difference is doubly problematic for the already oppressed and less powerful gender, for it works to further entrench the power imbalance: "(F)or women to affirm difference, when difference means dominance, as it does with gender, means to affirm the qualities and characteristics of powerlessness" (MacKinnon, p. 86).

MacKinnon regards the legal system as the institution principally responsible for maintaining patriarchy's oppressive rule. Smart (1991, p. 77) argues that this is a limiting position which underestimates other cultural factors and inevitably leads to problems with "essentialism" and "determinism." Frug (1992) likewise admits that although the theory has merits in advancing a view from below, a so-called Woman's perspective, its claim to represent all women is clearly at odds with postmodernist notions of multiple viewpoints. Naffine (1992, p. xii) also makes the point that the law has a bias toward a certain kind of maleness which causes it to discriminate against other (non-conforming) males: "Because feminists have often perceived men, uniformly, as the oppressors of women, the problem of legal sexism which has men as its objects has remained largely unaddressed."

Despite the considerable reservations expressed with MacKinnon's dominance theory many feminists still share her concern, that a legal defence based on the "stigma of difference" (MacKinnon, 1984, p. 85) inevitably revives damaging deterministic, biological theories about women.

4.4.2 Specific Problems with the Difference Position

One problem that could be viewed in this light is the recently utilised defence known as the 'battered wife syndrome' where a woman accused of murdering her partner uses in her defence, the history of violence and abuse perpetrated on her by the deceased person. The syndrome is characterised by certain features which require verification, or 'diagnosis', by a medical expert who is usually a psychologist or psychiatrist.[7]

While a self-defence plea incorporating the syndrome has been instrumental in gaining acquittals for women who were the victims of domestic violence, its use raises a number of issues. Firstly, the discourse it activates and serves to authenticate is a stereotypical one of woman as passive victim:

> (E)ven when a battered woman wins ... she may lose if she experiences this defense [sic] as a humiliation, thereby increasing her sense of powerlessness and reinforcing her submission to a system weighed against her. (Bartlett & Kennedy, 1991, p. 3)

The discursive strategies surrounding this discourse posit that the violence of the response, the killing, is uncharacteristic but is made comprehensible, or 'legitimised' in legal terms, by framing it within a medical context. The medical categorisation itself serves to further reinforce the impression of woman as victim, along with notions of difficult, problematic and unknowable, as the syndrome falls within a

broad classification of conditions termed 'psychosomatic'. Barrett and Roberts (1978) in a study on the social control exerted by doctors' on women patients suggest that the term 'psychosomatic' can be understood in two distinct ways:

> As well as the term's neutral meaning of a physical illness with a hypothesised mental origin, the label 'psychosomatic' frequently carries the connotation of the patient's supposed failure to withstand the strains of everyday life in modern society. (p. 41)

This latter description clearly fits the profile of the victim/woman whose symptoms, according to the medical model, are the result of "individual inadequacy" (p. 41) rather than due to any structural or cultural factors. Here again the discourse activated by the term 'psychosomatic' tends to perpetuate notions of women as subordinate and dependent. From Barrett and Robert's (1978) research there is clear evidence that medicine is an institution which exerts a high degree of social control over women.

As part of exercising this control the institution grants power or empowers designated people to speak as experts. 'The expert' is credentialled, or deemed to have the necessary expertise by qualifications and/or experience, to divine the presence or 'diagnose' the syndrome from a range of symptoms offered by the accused. In order to fit the pre-determined category certain criteria must be met. This process of slotting persons into categories is viewed as problematic by feminists. The law's attempts at standardisation are ideological and form part of various discursive strategies which work to shore up the dominant discourse. Ignored and discounted are a range of oppositional views which emanate from individual women's experience.

Graycar (1994) and Smart (1991) both acknowledge the positive aspects of using expert witnesses in circumstances where such witnesses can present alternative accounts of 'reality'. In such cases experts can offer a challenge to what are accepted masculine "commonsense assumptions" and ordinary "understandings of the world" (Graycar, 1994, p. 16). Graycar (1994) quotes Justice Bertha Wilson of the Canadian Supreme Court, who strongly supports the addition of these alternative accounts of 'reality' to the system:

> If it strains credulity to imagine what an ordinary man would do in the position of a battered spouse, it is probably because men do not typically find themselves in that situation .... The definition of what is reasonable must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical "reasonable man". (p. 16)

However for both Graycar and Smart the issue preventing unreserved acceptance of the 'special provision' categories for women, revolves around the expert's role 'of speaking for' or 'on behalf of' women. As Smart (1991, p. 47) contends there is no advantage to women being "saved from the law, only to be surrendered to the 'psy' complex." Such a procedure is ultimately disempowering for women because it "does not 're-qualify' women's accounts, it simply empowers the 'psy' professionals to speak for women" (p.47). Graycar (1994, p. 18) also expresses reservations about the practice of "delegating the construction of women ... to a group of 'experts' ... with authority to determine who is, and who is not, an appropriate 'battered woman' with a veritable syndrome."

4.5 The Possibilities for Reform within the System

Both Graycar and Smart suggest that law needs to take account of, and make provision for, the many alternative realities which are women's lives. Rather than

asking someone else. 'the expert', to "filter the women's experience", Graycar (1994, p. 18) calls for structural changes to the system which include redefining what is accepted as evidence. In the first instance Graycar suggests more flexibility in the system so that "people out there [can] ... come in here and tell us themselves what it is like out there" (p. 18). Or more radically still: "(W)e could bring people with experiences of 'out there' into here, that is, into judging" (p. 18).

In respect of broadening the judicial base, the Report on Gender Bias and the Judiciary (1994, p. 105) sees merit in encouraging judicial diversity, but virtually rules out any changes by recommending a continuation of the same selection procedures. So while the system acknowledges the need for change, and indicates some capacity to change, some of the modifications presently proposed, especially in the area of rules of evidence, may not deliver the reforms desired by feminists.

Recent amendments to expert-evidence law by the United States Supreme Court in Daubert (1993) now demand that a strict test of scientific validity be applied to all submitted expert evidence. The previous test of admissibility accepted by the courts, the Frye test, operated on the principle of 'general acceptance' by members of the relevant scientific community (Richardson, 1994). The Daubert decision, on the other hand, requires compliance with strict scientific criteria which include "a determination of the 'falsifiability' of the scientific theory, its 'known or potential error rate' and whether the theory has been subject to peer review" (Richardson, 1994).

The effect of the change according to commentators such as Professor Richardson, will be most dramatically felt in the Freudian based 'psy' disciplines where the

evidence being offered is not able to be falsified: "In fact many 'syndromes' ... such as the battered woman, battered child and rape trauma syndrome, may become problematic under Daubert" (Richardson, 1994). It is too early to predict the impact of Daubert on the Australian legal system but its acceptance would seem likely to restrict the 'special provision' defence currently utilised by some women.

4.6 The Possibilities for Reform outside the System

As has been demonstrated a feminist critique of law exposes that institution's inherent maleness and suggests some reform initiatives within the system. These though, are neither totally effective nor problem free. Bartlett and Kennedy (1991, p. 4) argue that law's "power" gives it significant potential as a vehicle for reform, but other measures outside the system also need to be utilised: "Stated simply, the depth and scope of transformation needed to end women's oppression cannot be achieved through law alone" (Bartlett & Kennedy, p. 4).

One area that might legitimately be considered a possible avenue for reform is the popular cultural phenomenon and mass art form of television (White, 1992). For a significant proportion of the population, television remains their most popular source of entertainment and information. A recent nationwide survey supports this conclusion, rating "television watching" as "Australia's number one cultural activity" (1994, July 7). The West Australian, p. 5.

It is also reported that law and legal professionals as a group are "over-represented" as narrative subjects on television (Hartley & Fiske cited in Chase, 1986, p. 551). This phenomenon is also commented on by Karpin (1995) who agrees that:

> Television seems to have a special relation to law. TV is littered with shows about the law. From cop shows to "Cops", from shows about lawyers, to shows about law cases, television in the States and to a lesser extent in Australia, is always doing law. (pp. 4-5)

Indeed the ubiquitous court room scene as narrative denouement is, in filmic terms, a classic signifier of textual closure and has come to represent something of a cinematographic cliche. In more recent times the popularity of the soap opera genre which habitually features "an array of professionals (especially doctors and lawyers)" (Chase, 1986, p. 558), signals an even greater proliferation on television of legal narratives and images. Within the genre of the soap opera the court room scene performs another function as well. It is a "locale where characters can deal with right and wrong, guilt and innocence" (Kaminsky & Mahan, 1988, p. 94).

4.7 The Role of Popular Culture

Legal commentators such as Chase (1986) and Fraser (1990) enthusiastically endorse the myriad manifestations of law which are available within popular culture. For Chase (1986, p. 527) diverse images of the profession are important because they "help legal academics gain a sense of perspective on the law from outside the confines of their own narrow discourse." Fraser (1990) extends this to include those outside the profession as well, insisting that the images television creates of the law, and lawyers, are rich sources of socially relevant material:

> The "image" of the lawyer in popular culture is, to oversimplify, at least a bi-level one. There is the "mass" image of lawyers, i.e. what real people who are not lawyers think and imagine lawyers to be, and there is an "internal" image of lawyers, in popular culture, i.e. what lawyers see themselves to be, how they present themselves to others, and what they want to be, all, in part at least, as a result of what they and their clients/friends, etc. see on television. And that is why I watch a lot of television. (p. 8)

Fraser (1990) does acknowledge though, that the interest and regard he has for television, sets him apart from his legal and academic colleagues. Watching television, after all, is an activity that falls within the province of the 'private'. From this perspective alone then, irrespective of the content or value of the programme, it is relegated to the trivial and irrelevant and remains incidental to the conduct of important 'public' matters, such as law.

This perception is not shared by cultural theorists who regard television as an important indicator and circulator of cultural ideas, social values and mores. Televisual texts from this perspective, represent significant markers or indicators of shifts in cultural values, and offer a logical area for study. White's (1992) view is representative of the approach favoured by cultural theorists':

> A mass art form like television provides a crucial arena for ideological analysis precisely because it represents the intersection of economic-industrial interests, an elaborate textual system, and a leisure-entertainment activity. (p. 170)

Examining and assessing law's representations on television will necessitate an investigation of what White (p. 170) calls the "elaborate textual system." As a feminist perspective has already been employed to explore law's institutional aspects, a similar analytic technique and perspective will be adopted in examining the selected texts. The two texts under review, have been included specifically because their narrative subject matter relates to issues of gender, and in these circumstances a feminist approach is considered to be particularly appropriate.

CHAPTER 5

5. MEDIA DECONSTRUCTIONS: TEXTUAL ANALYSES

5.1 Law's Hidden (A)Gender in Popular Culture: A Feminist Perspective

In this analysis of texts from popular culture I will be considering aspects of law which have already been identified as being of particular concern or interest to women. It is apparent that media discourse, through its provision of "gender-specific narrative forms" (Fiske, 1987, p. 179), already acknowledges the necessity to accommodate feminine meanings. The expanding soap and cross-soap genre forms testify to these efforts at inclusivity.[8] There is an expectation then, that 'women's issues', including those of particular concern to feminists, will be recognised through their representation in fictional texts. The contention of this thesis remains however, that the 'ideal of law', manifest as law the institution, will be as unchallenged in the texts as in the larger social context.

The two focal points for feminists engaged in legal reform have centred around appeals to either the equal or difference position. The textual representation and treatment of each, will be reviewed through selected episodes of LA LAW and Picket Fences.

5.2. Case 1: The Equal Debate: The Representation of Sexual Discrimination in an episode of "LA LAW"

In the episode of LA LAW screened on 30/6/94, the issue of sexual discrimination was presented as the principal storyline and provides a good example of the equal debate. The main narrative involved Ann Kelsey from Kenzie, Brackman, and her

representation of Judith Kincaid, a lawyer-colleague who sought to sue her own law firm employer, Owen, Pierce, McIntyre and Reynolds, for "sexual discrimination under title 7, for their failure to make her a partner."

Example of the Equal Debate

In what is for LA LAW, a traditional opening scene at the partners' meeting, Kelsey backgrounds the case for the viewers' benefit, making the point with heavy irony, that Kincaid's firm has no female partners *"not even one like there is here."* At the outset of this particular episode the viewer is made aware of Kelsey's feminist inclinations. Her overt support for her client suggests gender solidarity and a firm commitment to a cause, and this position is given extra narrative weight by a remark from Becker, a male colleague. Becker's announcement that he intends to purchase a Bentley *"because it will make me happy,"* signals an ideological dichotomy between the male and female points of view. Becker's motivations are clearly flagged as the base ones of materialism and individualism. His sexism is also signified in his rhetorical suggestion to Ann that she, *"try not to get* [the firm] *a reputation as a repository for litigious, embittered females, shall we Anne?"* The stereotype of the 'bitter/feminist' appealed to in the gratuitous insult has no narrative motivation at this juncture, so the viewer is positioned to regard it and the speaker negatively. This is just one of several instances where Becker's legitimacy to speak on 'women's issues' is undermined while Ann Kelsey's is incrementally enhanced.

In another example, Becker is shown to have dishonourable intentions toward a prospective staff member, Jane Halliday. She is cast as an attractive, virginal, fundamentalist Christian who Becker favours, out of self-interest, to join the firm.

Ann on the other hand, as a feminist, opposes the appointment because of what she believes are standard 'right wing' fundamentalists' views on civil rights issues, such as abortion and homosexuality. To this point in the narrative, the framing of the issue is clearly pro-feminist.

However Ann's ready acceptance of the negative stereotype of the fundamentalist, as automatically inclusive of Jane Halliday, is obliquely queried by a secondary narrative which raises questions about religious discrimination. Anne's claims to the high moral ground are gradually undermined, as the minor storyline via dominant specularity, positions the viewer to observe that the fundamentalist Christian, Jane Halliday, is in fact both highly ethical and principled.

The extra textual knowledge supplied by the minor narrative, prompts interrogation of Ann's judgement, suggesting perhaps that it is based on a 'knee-jerk' response which relates to her 'hardline feminist' orientation. The inconsistency that arises from these parallel narratives remains unresolved within this episode. This very lack of closure leaves the way open for a critical reading to be made of Anne Kelsey's reaction which may generalise to criticism of feminism as a methodology.

The structural device that sets up this narrative tension is characteristic of the drama/soap genre. Customarily several narratives operate simultaneously, with one or more of the lesser storylines used to comment obliquely on the main narrative. The two minor plotlines introduced in this episode include the one already discussed, the selection of the new junior lawyer, and another which deals with mental competency and the possibility of murder charges. Within these minor narratives two new cast

members, Eli Levinson and Jane Halliday are introduced. They function, to some extent, as individual representatives of specific minority groups: Eli is Jewish and Ms Halliday is a fundamentalist Christian. Their appearance in the drama foregrounds a parallel area of discrimination, namely religious discrimination, strategically included to mirror the main storyline which concerns sexual discrimination.

This distinctive narrative form which Mayne (1988, p. 37) refers to as the, "thematic overlap between the storylines or the 'echo' effect where storylines reflect off each other", is characteristic of the LA LAW series, and of soap opera generally. The fact that neither storyline acknowledges the other, is particularly significant in ideological terms. In Mayne's (p. 37) view such a strategy accounts for the series, "much-acclaimed quality of open-endedness." The open-ended narrative form is characteristic of the soap opera genre which typically avoids narrative closure, relinquishing in the process the opportunity to assert a strong ideological message (Fiske, 1987, p. 180). While this attribute of 'soaps' is positively regarded because it acknowledges "the viewer's power to make meanings" (Fiske, p. 179), such a position does not deny that texts do try to assert control over meaning and that texts p er certain meanings over others.

In the case of cross-genre texts such as LA LAW, which have a strong soap component, there is a tendency to progressiveness within the storylines and in the formal structure. This however, is counteracted or muted to some extent by the expectations of the competing law series genre which demands closure of the main narrative within each episode. The result is that initial progressive positions are quite often compromised or deliberately counteracted. This situation has already been

noted in this episode where the initial pro-feminist stance is systematically undermined. Rowe's (1988, p. 37) assessment of LA LAW draws attention to this dilemma: "(C)ompared to most prime time shows, it has a high degree of ambiguity and complexity. But essentially things work out for the best. Our heroes may be flawed, but the law is not." [emphasis added]

Many of the issues dealt with in LA LAW involve social systems, patriarchy for example is the basis for sex discrimination, and the series has been highly commended for its topicality and treatment of sensitive issues. Nevertheless, the solutions most favoured are individualised ones which implicitly support the status quo. Within this context, law is usually presented as the proper, appropriate and sole arbiter. In analysing this episode, which ostensively deals with the feminist issue of sexual discrimination in the workplace, some of these reactionary positions become apparent.

There is no doubt that the issue of sexual discrimination is presented, in the narrative structure as well as the content, as a serious and legitimate area of concern. This accords with Mayne's (1988, p. 31) view that, "LA LAW represents feminism not only as a thematic issue, but also as a narrative one." However there are unresolved ambiguities which accompany the proffered narrative solutions, and these inevitably raise doubts about what purports to be a feminist approach to resolving problems. For instance one question that is implicitly raised is: How legitimate is it to sacrifice one woman, who was not conscious of being discriminated against, to prove another woman's discrimination? A successful outcome for one woman, predicated on the sacrifice of another, is open to be read as a hollow victory in terms of broader feminist

issues, such as women's solidarity and the greater good of all. Such a reading quite clearly invites criticism of feminism as the appropriate and legitimate strategy in these circumstances.

The outcome of the case which sees Ann Kelsey victorious, with a partnership and compensation being offered to her client, is concrete evidence that discrimination has occurred. However Judith Kincaid's acceptance of a settlement, in lieu of the partnership, suggests self-interest and even more damagingly, for a feminist reading, it allows the firm's employment practices to continue un-reformed in patriarchal control.

There is real ambiguity too, in the figure of the other lawyer/colleague, Sylvia Reiner, whose humiliating employment situation at Owen & Pierce, is publicly exposed by Ann Kelsey to demonstrate ongoing discrimination by that firm. Sylvia, who, in Judith Kincaid's opinion is being used by the firm as "*window-dressing*", stoically maintains on the stand that she has no complaints about her treatment by the firm. She is then demeaningly described in the firm's report, read out in court by Ann Kelsey, as being, "*as loyal as a St Bernard, keep her chained to the doghouse, feed her once a day and she'll follow us anywhere.*" As this treatment continues, Sylvia is increasingly constructed as the narrative's innocent victim by both visual and verbal codes operating in unison. For example, during part of the court sequence, the camera moves in on Sylvia's face recording her mounting discomfiture and shame. Even more significantly, in an extended scene at the conclusion of the episode, the camera moves away from the successful duo, Kelsey and Kincaid, to focus on Sylvia's departing figure. Shot with slumped shoulders, cowered and defeated, Sylvia turns to follow on command, *"Come on Syl, let's go"* as one of the two male lawyers walks

ahead. As Rowe (1988, p. 37) aptly observes in relation to this series: "Our heroes may be flawed, but the law is not." For quite plainly, the law has delivered justice, (after all sexual discrimination has been condemned), but the victim, punished by both sides is the innocent bystander. The question left begging is: Who is to blame? The preferred reading seems strongly to suggest feminism and feminists.

While no criticism of the legal system is signified nor implied in the narrative, some of the loose narrative threads are similarly suggestive of an anti-feminist rhetoric. The overt victimisation by the male hierarchy, represented by the law firm and the male lawyer, for instance, is flagged as an obvious iniquity at the outset. The subsequent victimisation which results from the actions of the women, who professionally speaking are Sylvia Reiner's 'sisters-in-the-law', strongly points to a reading, critical of feminist practice in action.

Categorising Women in "LA LAW"

The women in this narrative divide conveniently into those who are active, assertive, career-orientated women such as Ann Kelsey and her client Judith Kincaid or, meek 'lapdogs' like Sylvia Reiner. The dog metaphor is an appropriate one, as allusions to it recur throughout the episode. Sylvia remarks to Ann Kelsey prior to being called as a witness, that she does not want to be portrayed as, *"a poor pathetic creature who worked her entire adult life for whatever scraps these men have thrown from the table."* Despite being both sympathetic and apologetic Ann Kelsey must, because the law demands it, expose Sylvia's vulnerability and stagnant career to advance her own client's case.

This foregrounds Rowe's (1988, p. 36) observation that one of the familiar questions posed in LA LAW is to what extent the professional women of the series, "must become like men to be accepted by the male establishment?" The answer to the question, based on this episode, is that the law rewards those, who best approximate its ideal litigant, "the man of law" (Naffine, 1992, p. 22). In this respect both Ann Kelsey and her client are seen to be the equal of the opposing law firm's arrogant, male partner, who, under Ann's careful cross-examination, is provoked into a vitriolic tirade against all women. He is unsympathetically characterised by close-up shots from below and this negativity is further reinforced by dialogue which marks him as patronising and sexist: *"Everytime you don't get what you want it's because you're a woman right. It's the glass ceiling, whatever that is Well you know what, I'm a little sick of all your whining."* The viewer is positioned with Ann Kelsey to regard this intemperate outburst as blatantly sexist and self-serving. Kelsey is seen to resist the opportunity to take personal offence, and uses the remark instead to advantage her client. Her objectivity, as opposed to her adopting a more subjective, emotional approach, which might typically be characterised as a feminine response, is validated cinematically by closeup shots of his extreme discomfiture at being caught out, and her triumph at having trapped him.

In its examination of sexual discrimination the text reveals discursive and rhetorical strategies surrounding gender. The two main discourses, a masculine and a feminist discourse, take shape during the court appearances. In the final addresses to the jury the different positions are most clearly defined. During the opening scenes, the construction of the complainant Judith Kincaid, is of an aggressively competent,

career woman, similarly attired, but in the character casting and costume not nearly as attractive as Ann Kelsey. This unsympathetic casting, which forms part of the construction of character (Fiske, 1987, p. 9), sets up a narrative tension by explicitly offering an ambiguous reading position for viewers. Also, as part of the defence case the male senior partner describes her as, *"rather severe, cold, tending to be abrasive, bossy, ill-tempered and not a lot of fun to be around."* This assessment is offered as an analytical, well reasoned report, devoid of subjectivity, and the actor's portrayal of Judith Kincaid's demeanour, particularly during her terse testimony in court, reinforces the male description of her as difficult and hard-edged.

The process of recuperation only begins when Ann Kelsey exposes the senior partner's ingrained sexism and reveals the degree of hidden subjectivity contained within the gender stereotype he offers with such seeming objectivity. Following this narrative development, the verbal and visual codes begin to recode Judith Kincaid as someone more positive, as she smiles and becomes more humane in expressing concern for others. In turn, Kelsey is able to re-activate this notion of gender stereotype, utilising the feminist strategy of 'looking again' and succeeds in re-inscribing it positively to support her case of sexual discrimination.

The Equal Debate

In the final address to the jury, Ann Kelsey, arguing from the gender neutral position, asserts that her client wants equal treatment not "*special treatment.*" Her complaint is that Judith Kincaid has already received special treatment because her employers chose to judge her as a woman-lawyer rather than just as a lawyer. The core of her

argument is a feminist one that centres on the notion that the cultural construction of woman requires conformity to a norm that is a gender stereotype.

Kelsey makes the point that attitudes and behaviour validated in males, such as being assertive, aggressive, singleminded and self-reliant, are re-inscribed negatively in women as "*abrasive, bossy, cold and calculating.*" Judith Kincaid does not conform to the so-called 'normal' gender stereotype, and Kelsey admits that this makes "*the men of Owen, Pierce, McIntyre and Reynolds uncomfortable because naturally they would prefer men around them like themselves.*" At this point the camera focuses momentarily on an Asian juryman whose glance shifts suddenly across to the men of law. His flash of recognition signals to the viewer a realisation, and an understanding shared by them, that 'natural' institutional exclusivity is at base 'discrimination' and it applies not only to gender but to race as well.

In putting the contrary view, the defence also attempts to utilise a notion of equal treatment but blatantly places the male as the universal standard for comparison. There is no recognition or acknowledgment of any structural or cultural impediments that women as a group face in a patriarchal society. To compound this omission, the analogies that are used in this sequence are uniformly masculine. One of the most telling analogies used by the defence involves an extended reference to boxing. Lessons, supposedly learned from this bastion of masculinity, include the ability to "*get back into the ring after being knocked down.*" The inappropriate use of metaphors, that are normally associated with a masculine paradigm, provoke a degree of disjuncture. The misfit between language and subject is picked up in visual cues as well. In a sequence when the defence counsel stresses that women should be judged

the same as men, the camera turns significantly to a close-up of the tragic face of Sylvia Reiner. There is a suggestion in the framing of the victim, that those who are judged(women), are not the same as those who do the judging(men). On this evidence there is no formula or principle that guarantees that the deserving, the loyal or even the talented, get their just rewards. But then this narrative suggests that righting wrongs and seeing that justice is done, is the role of law.

Although the end result, an anti-discrimination judgement favouring Judith Kincaid, seems strongly to assert a woman's right to equal treatment, an analysis of the text suggests significant degrees of incorporation. In playing the game, using their rules and winning, Judith Kincaid shows herself to be 'one of the boys'. The masculine qualities required to win, are those that are synonymous with business and institutional life but these are also shown to be, oppressive, exploitative and uncaring. Her victory validates in no small way, her alliance with the masculine culture. There is no certainty that another woman/mother/lawyer, such as Sylvia Reiner, who represents another type of woman and one less able to assert herself, would be guaranteed such a successful outcome. As MacKinnon cited in Barrett and Kennedy (1991) asserts:

> The women that gender neutrality benefits .... are mostly women who have been able to construct a biography that somewhere approximates the male norm, at least on paper. They are the qualified, the least of sex discrimination's victims. (p. 85)

Her observation reaffirms points made earlier that the law, because it is based on a male premise, works best for those who most approximate its ideal, Naffine's (1992, p. 22) so called "man of law."

This masculine point of view is discernible in another sequence in this episode, when a comic perspective is offered on another area of discrimination. The sequence forms part of a series of short scenes highlighting the selection process of a junior lawyer to join the firm McKenzie, Brackman. All of the applicants are portrayed as extremists of one kind or another ranging from a self-promoting high flyer to a 'wacky' environmentalist. One of the applicants is shown as heavily pregnant and as she sits uncomfortably in a chair before the jaded all-male interview panel she remarks *"I guess I'd like to start by asking about maternity leave."* From a feminist perspective this enquiry is perfectly legitimate and serious, and given the applicant's condition is certainly appropriate.

However the contextualisation of this scene, as one in the series of oddball applicants, combined with the male panellists' expressions of disbelief, renders the remark ridiculous and positions the viewer to regard it as a wholly preposterous request. The discriminatory nature of the scene is totally negated by farcical humour. Rowe notes this comic tendency in LA LAW and suggests it contributes in no small way to meaning confusion. Indeed Rowe's (1988) assessment of the series as a whole, is explicative of this particular episode:

> LA LAW gives us some 'positive images' of women and minorities and tries to expose contradictions within the institutions and practice of law. But it blunts those contradictions. In effect, its tone and vision are comic .... The tone of the program, which is essential in determining how viewers are meant to perceive types (or situations) like these, just isn't that clear. (p. 38)

Outcomes

In this episode the topical issue of sex discrimination in the workplace is aired and, with the case decided in favour of the woman who brought the action, the text might be considered pro-feminist. However as has been illustrated, the feminist discourse is substantially compromised on several fronts. The most important of these is the implied criticism of 'feminist practice' or feminism in action. Feminism is constructed in the text, as an uncompromising and humourless system which sees no contradiction in the sacrificing of one weak woman for the advancement of another stronger one. Predicably because this is obviously 'bad' practice, rewards are few with the only winner in the charade being the law. The law wins because its flawless method enables it to discern the 'truth' despite the imperfections of the individuals involved.

Questions about the method and practice of law which might well have been asked but were not, include whether there is something fundamentally wrong with a legal system which, because it favours reasoning from analogy (Naffine, 1992, p. 50), finds one person's claim to truth established and proven, by the victimisation of another? Gillers (1989), a law professor, proposes that just such a question, if it had been raised, is proof of LA LAW's ability to air recurring, ethical legal problems:

> Lawyers are often required to behave in ways we would condemn if the same people were not acting as lawyers. Often, loyalty to clients requires lawyers to tolerate injustice to others, even to perpetrate it. How do lawyers handle that dissonance? How can it be proper - even laudable - to do for others what it would be wrong to do for yourself or a friend? (p. 1615)

The answer of course, within the context of this text, is by individualising the problem and vesting the solution in the moral integrity of the characters in the drama. Any

opportunity to interrogate law's methodology and practice is conveniently ignored.At the same time the text superficially suggests, in its choice of narrative subject, a possible challenge to law. In allowing space for oppositional discourses, like those rel ıting to gender stereotyping, the text indicates some progressive potential.

From a feminist perspective, however, the text reveals significant textual closure, a high degree of incorporation and a narrative framing which under.nines the possibility of validating any feminist agenda. Law, in this episode, is positioned as an ideological icon which is impervious to assault and secure in its regulatory role. This text offers no challenge to law either institutionally or through a feminist interpellation.

5.3 Case 2: The Difference Debate: The Representation of a Medico-Legal Issue in an episode of "Picket Fences"

In law the difference concept revolves around the notion of women possessing unique characteristics which are routinely defined and determined on biological grounds. The law relies on science, particularly medical science, to validate its regulatory role in this area but many of the organising strategies or 'syndromes' derived from this classification tend to present women as victims. An episode of Picket Fences screened on 2/9/93 used as its narrative subject, an insanity defence for murder based on the menopause as a medical condition. Although the storyline concentrated particularly on aspects of the menopause, different areas of sexuality were introduced via minor plotlines and these were used either directly or indirectly to comment on the main topic.

An Example of the Difference Debate

Like LA LAW, Picket Fences employs the court room scene as a dramatic device to present opposing positions but it tends toward blending the serious content with a lighter touch. The contrast between the two series is signalled in their opening sequences. LA LAW advertises itself as sophisticated fare from its opening shot of the "California license plate" to its "towering glass skyscrapers" (Rowe, 1988, p. 31). By contrast Picket Fences, despite its title which suggests all-American values of home, family and country, actually offers a visual representation which is much less straightforward. Its opening visual signifier is a stylised, white, picket fence set at a crazy angle and topped by an impossibly blue sky and white clouds. The scene is obviously a mock-up, a fake, an ironic comment on the 'ordinariness' of the home, the family and the small town. For indeed there is nothing ordinary about events that occur in the Rome, Wisconsin setting of Picket Fences.

The homage here in visual style with the white picket fence, and in content, points to the work of director David Lynch, whose film Blue Velvet and television series Twin Peaks, both explored the dark underside of small town America. The theme tune of Picket Fences rejects exact comparison however, as it suggests pure 'soap', gentle and absolutely non-threatening. The clouds are the one discordant note which act as signifiers to narrative seriousness. Their appearance in either white or dark grey at commercial breaks, act as a visual barometer on the unfolding drama.

Viewers are often alerted in the opening sequence to disruptions to the discursive conventions of realism. Here the narrative line and casting, actively promote interrogation of the 'real' by introducing bizarre plots and characters. This mix of the

surreal and the ordinary allows for the extraordinary to appear quite normal. In other words quite radical readings are offered within the text. By comparison LA LAW is steeped in realism which as a form tends to inhibit and resist radical discourses. "The camera, the artifice of the program, become invisible on LA LAW, thereby making its representation seem all the more true to life" (Rowe, 1988, p 33).

Within Rome, the action vacillates between the sheriff's office, staffed by the moral centrepiece of the drama Jimmy Brock, and his home, where the other central character his wife, Dr Jill Brock, resides with the children. There is little demarcation between work and home. The public and private realms frequently spill over into each other, which differentiates it again from LA LAW where the action is concentrated around workplace relationships

In the episode dealing with 'menopausal madness' a local woman, Alice Freeman, is charged with murdering her husband in a bizarre set of circumstances which include running him over with a steamroller. Although the crime is viewed as somewhat unusual, even by Rome's standards, the sheer weirdness of the event oddly enough, lends support to a theory favouring mental instability as the cause. As an expert medical witness, Dr Jill Brock actually employs this logic in defence of her patient Alice Freeman. "*She flattened her husband with a steamroller. What is that if it's not insane?*" The prosecutor is quick to point out, the 'twisted' logic of this circular argument, but as a commonsense notion it is hard to resist. As textual subjects we are constructed (Fiske, 1987, p. 62) and drawn into accepting this 'commonsense' explanation as being not only possible, but even highly probable.

The problems associated with different types of 'knowing', are explored in this episode, with logic and facts being ranged against feelings and intuition. Offered for scrutiny are questions about the value that can, or should, be placed on judgements based on feelings, (the 'commonsense' feminine judgements), versus judgements based on facts (masculine judgments). Neither of these positions is seen to be gender specific and neither is offered as being wholly correct or infallible. In other words these oppositional discourses, are offered as competing forms of 'truth' which strive for acceptance.

Both Carter Pike, the forensic pathologist, and Douglas Wambaugh, the lawyer, fall prey to the 'feminine' logic of 'knowing' something to be true despite 'factual' evidence to the contrary. Their rationale for adopting their respective positions, differs however. Carter, as a hopeful suitor, projects an idealised image of Alice Freeman which impairs his vision/judgement. Wambaugh's interest is in winning a difficult legal case even though this can only be effected by overwhelming the rational and logical with linguistic sophistry. Wambaugh achieves this end by forcing the medical specialist to admit that temporary menopausal insanity, though not probable is "*possible*", and because that which is possible cannot be ruled out, the jury have the option of acquittal through 'reasonable doubt'.

Jill Brock is also drawn into supporting Alice Freeman's position but her judgements are seen to be affected by both professional and personal involvement. Professionally, her failure to diagnose Alice's menopausal symptoms makes guilt a factor which influences her views and decisions. On a personal level, Jill's empathy

with the accused's situation becomes so totally subjective, she projects the onset of menopause on herself. "*This could be happening to me. She's forty, I'm forty It could happen at forty.*"

The contrasting 'objective', masculine viewpoint is presented by Police Chief Jimmy Brock, who accepts at face value the truth of the facts as they appear. He sees the murder as the culmination of a carefully planned series of events which have been deliberately staged to focus attention on Alice Freeman's mental state. After explaining this scenario to her, he states, "*I'll tell you what I know Alice. Menopause is a misunderstood condition. Doctors are confused. It lends itself perfectly to reasonable doubt. It's also a temporary condition, you don't get institutionalised. As insanity defence's go, it's a good one. You can win and walk away completely free.*" The logic of this argument is undeniable. Yet because it is given little narrative weight, the final scene, with its deliberately constructed twist-in-the-tale which exposes Alice Freeman's duplicity, is quite unexpected. Here the viewer is positioned with the transfixed Carter Pike, outside the window looking in, watching as the triumphant Alice Freeman toasts the success of her deliberately contrived, devious scheme. Like the participants within this drama, the textual subject is invited to be 'duped' by the televisual discourse.

The fact that this shocking revelation is shared, but limited to the viewer and Carter Pike, has several implications. The authorial intention is certainly not to suggest in this instance, that good will somehow triumph; that the evil-doers will be punished, and that those who were duped will come to understand and correct their mistakes. Just the opposite in fact. Although superficially, the narrative might seem to be

pointing to a failure of the legal system and to a vindication of the 'objective' viewpoint, this effect is muted and not strongly enforced or preferred as a reading position. Instead, the moral ambiguity implicit in the resolution offers great polysemic potential, and overall there is little attempt made to constrain meaning.

Indeed the brevity of the final scene and its limited dissemination tends to inhibit its overall narrative power. In other words the discourses offered throughout the narrative, many of which are concerned with the problems of adolescent and menopausal sexuality, remain valid as important explorations of little understood and little discussed topics. Jill Brock's concerns about the menopause, as an unknown, frightening event which may change her physically and mentally, are replicated and validated through the comments of several other characters. For instance after a heated exchange about menopausal symptoms between Maxine, the police officer, and Ginny, the dwarf receptionist, Jill is allowed to summarise the situation: "*This is the kind of shame and denial associated with menopause which is the reason in our 20th century with modern medicine, that we know almost nothing about it.*"

In another scene involving Wambaugh and his wife, Miriam, he asks her to explain how 'the change' affected her. "*Did this menopause thing make you crazy?*" Miriam is the only one with experiential authority to speak on the subject and even she finds it impossible to describe. "*All I can explain Douglas is that you, the judge, Sheriff Brock, Dr Marino, you'll never understand it and even Jill Brock she doesn't have a clue either. Until you've lived through it you can't understand it.*"

The idea that change itself is the vehicle through which learning occurs, that process rather than resolution is the important thing, is both explicitly stated and implicitly structured within the text. The narrative in emphasising process, rather than the "goal-oriented .... clearly prioritized plot structure of masculine narratives" (Fiske, 1987, p. 213), permits the interplay of discourses without clear prioritization. For example in Jill's frantic sexual activity, described by Jimmy as a "*sex marathon*", the viewer sees Jill arrive at an understanding of how her own fears of the menopause cause her to behave irrationally. Again, as Jill's close identification with Alice Freeman may cause her to misjudge, we viewers are similarly invited, both visually and verbally, to view Alice Freeman non-prejudicially. Jimmy too, is allowed to vacillate from his position, indicating that the certainty he initially espoused as 'objective' knowledge, is not secure. He had simply ignored the possibility of other points of view. "*Maybe we are wrong. The truth seems to be that menopause is something we don't understand Don't get me wrong I think she's guilty, but I have to admit I never even considered she could have been innocent.*"

The lack of equilibrium which follows the airing of this multi-layered and unresolved discourse on sexuality, offers great polysemic potential. Neither the narrative twist-in-the-tale nor the serious character misjudgments are sufficiently powerful in themselves, to override or curb the progressive potential of the text on this issue.

Textual Implications

The implications that arise for law are profound. Someone, and it is no accident that it is a woman, has deliberately set out to subvert the legal system and succeeded. It is exactly because Alice FREEMAN is a women, and her surname offers an interesting

irony, that she is able to activate a defence predicated on 'difference'. The difference in this case is that the biological entity known as the menopause is a condition, or set of symptoms, unique to women. This makes the defence a gender specific one. What is proposed in this text, through a variety of competing discourses on sexuality, is that the meaning of 'the menopause' is far too complex, not well enough understood and altogether too difficult a concept, to be easily categorised or contained within its medical definition. It is certainly too heterogenous to be fitted into any pre-determined legal category.

An example of the polysemic potential is apparent in the characterisation of the victim/victor Alice Freeman. For the greater part of the narrative, Alice is constructed as a powerless 'victim': firstly, in the face of her hormones which control her; and secondly, before the institutions of medicine and law, which have the power not only to speak for and on behalf of her, but also to judge her. The fact that she is able to fool them both, by 'acting the victim', is less important in narrative terms than the discourses which surround the institutions' endeavours. As Fiske (1987, p. 91) observes, "excess allows for a subversive, or at least parodic, subtext", and Alice represents this 'in spades'. A possible reading position, consistent with the discourse of woman as being by nature mendacious and duplicitous, is available through Alice's deliberate and successful transgression against society's controlling institutional systems. This discourse has an clear referent in law where, in rape cases for example, women's evidence inevitably required corroboration. As Graycar and Morgan (1990, p. 339) report "there seems little doubt that these rules [of evidence] developed because of a widespread belief that women lie .... Such beliefs have by no means disappeared."

But an alternative reading, one consistent with Fiske's (1987, p. 191) "soap opera villainess" is also available and has obvious appeal for a feminist readership. From this subjectivity, Alice's success in the face of patriarchal control, including her ability to subvert institutional practices to her own advantage using her sexuality, can be read as a positive sign of female power in action. This position does involve the reader in moral ambiguity since Alice, after all, has murdered her husband and she quite blatantly deceives and uses people. Nevertheless similar inconsistencies and contradictions typically circulate within the soap's open text and are readily accepted within this context (Fiske, 1987, p. 191). Indeed, according to Fiske, such situations merely replicate inherent contradictions in society which are already well understood by women (p. 191).

The unexpected resolution of the storyline, which shows Alice Freeman triumphant, also represents something of a narrative 'joke' which works to prevent textual closure (Fiske, p. 87). It catches the viewer unprepared and the sheer audacity of its implications, provoke a resolution that Fiske describes as a, "collision of discourses ... [which] produce(s) an explosion of meaning" (p. 87). There is subversive pleasure available in the narrative line that allows the subordinate, the encoded 'powerless victim', to take on the system and win out against authority. If, as Chase (1986, pp. 561-562) observes in relation to popular music and the law, a song such as *I Fought the Law, and the Law Won*, offers both subservience and resistance to authority depending on the performer, how much more empowering is the amended version *She Fought the Law and She Won*!?

The text is also subversive in its treatment of, and regard for, institutions, their practitioners and the experts who support them. Throughout the narrative there is a systematic dethroning of authority figures, who are variously shown as fallible, gullible, illogical and plainly dishonest. For example, the medical "OBGY expert" whose specialist advice on the menopause is used by the prosecution, is shown to have colluded with Alice to construct her menopausal syndrome. He is quite plainly dishonest. The gross perversion and misuse of 'knowledge' which his action signifies, gives rise to legitimate questioning and an undermining of the status of the expert and authority figure.

In a less obvious and certainly less culpable way, Dr Jill Brock's personal failings, her gullibility and vulnerability in respect of Alice Freeman, inevitably lead to queries about professional fallibility. The situation applies too, with the lawyer Douglas Wambaugh who, in a similar way, is guilty of misjudging his client. The critique of both Jill Brock and Douglas Wambaugh, is defused to some extent by narrative motivation which provides a rationale for their actions. However Wambaugh's legal victory, which is really a moral defeat, allows questions to be asked about the legitimacy of law and the rights it assumes to regulate and dispense justice.

At the base of the text lies an implied criticism of both the medical and legal institutions. Neither it seems, is able to discern fact from fabrication, truth from fiction or symptoms from simulation. The text presents the menopause as a area of 'excess', whose meaning escapes beyond the confines of the text. The competing

discourses which constitute this meaning are certainly not able to be contained within the institutional boundaries of law or medicine.

The overall critique is not directed at the 'difference' category per se, which some feminists regard as problematic anyway because of essentialism, but at the overarching problem of defining, classifying and finally delimiting what is known and can said about sexuality in our society. For this reason the text is less concerned with the 'guilty' individual who, in this case makes both the law and medicine work to her advantage, and more intent on revealing the processes by which competing discourses struggle to have their truths accepted as the 'truth'. Derry's (1988) comments on the genre, reinforce some of these points:

> Guilt in soap operas is complex .... Significantly, the use of the courtroom does not reflect the genre's faith in social justice or the American political system. On the contrary, the soap opera suggests that justice cannot be organised by a social agency, but only, on occasion, by a capricious fate. (p. 94)

Outcomes

Although this text's plotline is ostensibly about the issue of a devious woman using a legal loophole to escape justice, its focus is not directed toward the legal ramifications of this action. For example, the use of 'difference' as a form of legal defence only available to women, is not critiqued to any significant degree. So, although the law's decision in this case proves to be erroneous, there is no suggestion that this defence position is inevitably wrong, unreasonable or improper. What is offered instead is the proposition that all forms of sexuality are naturally multifaceted and involve the 'unknown'. This obviously positions them as discourses, in opposition to institutions,

such as law and medicine, whose discursive strategies construct discourses of certainty.

The critique is thus directed more toward institutional forms, whose structures, personnel and language require conformity to established 'norms' within arbitrary categories. The fact that someone can assume the criteria of a category and then bypass both science and law's 'truth finding' processes, suggests fallibility on the part of these institutions. The lack of retribution apportioned to the perpetrator, signifies that the text's intent is to fix the 'blame' or source of the problem away from the individual. To this extent opportunities are offered to interrogate both the institutions of law and medicine.

The intersection of law and science in this text presents a radical departure from what is standard practice in this field of representation. Medical experts are presented offering contrary opinions and in the final analysis, none is correct. Science is again cast in the role of aiding law in its judicial function, but contrary to expectations, the medical experts actually assist law in bringing about a miscarriage of justice. While, as the previous chapter illustrated, such events happen in practice, they are rarely represented in this light. This institutional association appears as one of double jeopardy with errors compounded and reinforced by each institution, one on the other.

In conclusion this text can be seen as contravening the contention of this thesis that institutions are seldom critiqued. The polysemic potential of the text allows for other readings while the space and weight allocated to oppositional discourses mark it as a progressive text which challenges law's 'divine right' to control and regulate.

CHAPTER 6

6. CONCLUSION

This thesis set out to establish whether law's 'crisis of confidence' (Sackville Report, 1994, p.3) is reflected in popular cultural representations of law. The enquiry was premised on a perception that law is under challenge, which Cassidy (1993, pp. 12-13) identifies as occurring within the print media. It was proposed that as television texts represent significant sites for articulating the possibility for social change (Fiske, 1987; White 1992), these would provide the study's main investigative sites.

This thesis devised three investigative categories to test whether challenges to law were visible in the audio-visual area of popular culture. These investigative categories- institutional theory, feminism and the law/science nexus- provided an analytic framework to examine how changes were impacting on law. The task was to determine to what extent any of the apparent impulses for change within the areas examined, found expression in mainstream culture; in other words, were visible as oppositional or alternative discourses within the popular texts selected.

At the outset law's institutional position within western society was observed to be firmly established: its primary role being to dispense 'justice' based on notions of order and control. This understanding of law, that its position and role were unique, and that its goal of 'justice' epitomised what a proper society would want for its citizens, is a commonsense, assumed position. Critiquing this proposition by way of

institutional theory, this thesis suggested that institutions are not unique, but are at base, remarkably similar social constructions. Their tendency to accentuate their differences derives from their need to define their power and delineate the extent of their spheres of influence. Indeed institutions are characterised by marked similarities, including an hierarchical structure and a common mode of operation which includes an exclusive membership and a unique and defining language. An examination of law from this institutional perspective, as was undertaken in chapter one, confirmed law's close affinity with the 'model' institution.

The relevance of this correlation was particularly significant in the light of its ideological implications. For, while law's regulatory power presented, and was accepted, as the 'norm' and 'natural', its discourse was able to discount and counteract any alternative accounts of reality. Thus its regulatory control derived from its power to define what is lawful, or conversely, unlawful. Indeed law's 'legal method' acts as a paradigm, offering the 'perfect' example of a set of pre-conceived criteria used to legitimise the disqualification of other viewpoints. It is used most effectively when employed to silence non-legally-sanctioned voices, such as those of minority groups like women, children, Aboriginals and others from non English speaking backgounds.

The force and pervasiveness of law's discourse was observed most markedly in its strategies of incorporation. Feminists particularly noted the extent of law's encroachment and the expansion of its sphere of influence into the new and previously 'unregulated' areas of women's reproduction rights (Karpin, 1995; Smart, 1994). The transient nature of law's hegemony becomes apparent in such encounters. Rather than some static or fixed entity, law's hegemony more closely approximated

the notion of a stable core, with a periphery that reacted and re-formed according to specific societal pressures and cultural demands. This thesis viewed this process of incorporation as intrinsically destabilising and surmised that instances of institutional challenge could well result from such expansionary forays. These were the theoretical understandings which formed the interrogative base, from which law's institutional traits were subsequently examined within texts.

There was an expectation, based on law's sheer over-representation in popular culture, that some degree of narrative disruption would be detected in the texts, pointing to polysemic possibilities. At a superficial level this assumption found support in some law representations which did appear less constrained, especially when compared with those of science. However, textual analysis revealed that, although the storylines exhibited high levels of narrative disruption there was a marked uniformity in the type of disequilibrium favoured. It was one heavily reliant on character which pointed toward a reinforcing of the dominant discourse of individualism.

Perhaps though, in the mere representational linking of law with the 'flawed' (individual) practitioner, an opportunity for challenging law, the institution, is offered? According to Cassidy's (1993) and Rowe's (1988) research, this type of generalising effect seldom occurs. Both report that individualised depictions of wrongdoing in such situations, rarely extend to reflect adversely on the institution itself. Textual analyses of Law of the Land and LA LAW, undertaken as part of this thesis, confirmed these findings.

Both of the texts, Law of the Land and LA LAW, tended to individualise agency as a way of deflecting scrutiny away from social structures as major determinants of action. In every case fallibility remained firmly attached to the individual protagonists with little or no critique of law being offered. Indeed, in Law of the Land, law was deliberately positioned as the narrative centrepiece with narrative resolutions being the province and jurisdiction of that institution. This was maintained even though, as the text revealed, human intervention was required to obtain law's 'just outcome'. Such 'compensatory' acts were not constructed to reflect adversely on law, nor offered as evidence of any inadequacies in that institution's praxis.

In LA LAW, the law was similarly shown as being able to arrive at the 'correct' decision, (eg. sexual discrimination was proven), despite the imperfections of the individuals involved. The subject matter of the storyline and its narrative outcome both had progressive aspects, as was eluded to in chapter five. However, the text actually set up for interrogation a range of 'feminist discourses', which were negatively presented as oppositional to, and therefore disruptive of, the status quo. Law, because of its role and position in the current social order, (the status quo), remained exnominated within the text. As a consequence, there was no necessity, in terms of narrative logic or meaning making, to critique law as an institution. Nor did the series find it necessary to investigate law's underpinning, its 'legal method' which, in demanding that 'truth' be proven by analogy required that one woman be victimised to gain justice for another. In texts such as these, where legal institutional features, such as being value-free, objective and gender neutral, function within the narrative as synonyms for certainty and moral rectitude, there can be little expectation that law itself will be critiqued.

By contrast a range of institutional challenges were observed occurring within the legal drama/action/soap Picket Fences. This fictionalised representation of small town life, characterised social 'norms' as in a constant state of flux. Discourses which would commonly represent and reinforce the normal or 'common sense' view of society, functioned in this series as narrative variables. In the particular episode examined, there was a deliberate strategy to dethrone institutional knowledges by re-prioritising the hierarchy of their discourses. This technique opened up for scrutiny, and made vulnerable to critique, law and medicine, the two key institutions involved in the narrative. The fallibility of both institutions, made manifest in the acquittal of the 'guilty' woman, challenged law's discourse of certainty. Furthermore, the text's deliberately open ended and unresolved plotline, which blatantly disregarded standard ethical and moral issues, such as the need to punish the 'law breaker', pointed to the text's validation of discourses opposed to dominant cultural values in respect to law and morality.

The lack of retribution accorded the guilty party in Picket Fences contrasted with Law of the Land and LA LAW, and this outcome was significant because it worked to positively direct 'blame' away from the individual. In offering such a reading Picket Fences demonstrated how texts really do have the potential to "shift the responsibility for the crime away from the (evil) individual and place it firmly onto the social system" (Fiske, 1987, p. 86). In other words, deep seated social structures and organisations that operate as concealed sites of power, can be opened up textually as potential investigative sites. Picket Fences is the one text examined which significantly contradicted the contention of this thesis that law, the institution, is rarely

critiqued. The range, textual space and narrative weight afforded oppositional discourses within this particular text, indicated that critiques of law can, in certain circumstances, coincide with preferred reading positions.

This thesis also contended that while institutions are naturally structured to resist scrutiny, some are especially privileged in this regard. It argued that these institutions claim hierarchical superiority, and an associated resistance to interrogation, because of their affiliation with science. Claims to be 'something like science', were seem to confer a particular resistance. Law proved to be just such an institution with media representations that worked discursively to reinforce the ideology.

As was observed in chapter two, science's claims to infallibility tended to generate representations that were commensurate and compatible with that ideological position (Gardner & Young, 1981). This contrasts with law, which does not claim infallibility and so encourages its discursive representational strategies to be less rigidly enforced or controlled. However, representational overlaps do occur and these were observed most notably at the junction between science and law. This thesis argued that, in such encounters, science's discourse supported law's claims to 'truth' through the hierarchy of discourses which grants 'natural' precedence to science. Science's discourse also had a further discursive power to invest judicial outcomes with a certainty and 'rightness' that made them difficult to counter or reject. Forensic science was selected as the site to examine this junction between science and law; firstly, because it was a problematic site in many miscarriage of justice cases, (Wilson, 1991) and secondly, because it remains a favoured representational site within popular cultural texts.

In its representation of the law/science nexus, Phoenix typified a whole range of similarly framed texts, which have narratives motivated by the strong investigative elements of the cop/mystery genre. In these texts narrative tensions typically revolve around 'solving the case' and any problems that obstruct the desired outcome, 'the solution', are inevitably resolved by the intervention of science. Accordingly science is positioned in the role of plot 'problem solver'. This narrative tendency supports textual closures which are predicated on science providing the one (and only possible) answer. Such a narrative structure provokes a predictable ideological outcome as, armed with science's incontrovertible 'truth', the judicial outcome appears obvious, and therefore, uncontestable.

Phoenix, for example, used science as its guarantee of narrative 'truth' while also attempting to appropriate science as its paradigmatic model. It utilised the representational strategies of the conventional TV science format by employing discursive practices designed to curtail meaning making and reduce reader empowerment. These strategies included: valorising the 'value-free' scientist; authenticating science's uniqueness through its own scientific language; merging verbal and visual elements to inscribe the viewer into the screen space; and employing the contrived visual style of 'naturalism' to authenticate the 'reality' of the fictional world. The technical device of heavy realism was a common feature of both Phoenix and Law of the Land and their adherence to it, and reliance on its visual form, hinted at its central role in determining textual meaning. Analyses of these texts demonstrated that, when reproducing the 'real' is a central tenet and a defining

characteristic of the text, dominant discourses tend to be advantaged in terms of preferred readings.

Texts such as Phoenix, which promulgate an arcane view of science as inevitably reifying law, actually replicate science's own discursive strategy of positioning readers regressively. Furthermore, by positioning science as an infallible adjunct to law, Phoenix lent support to a deterministic and regressive stance which preserved and promoted a problematic status quo, already identified as occurring within law. This gives rise to a contradiction, in that texts such as Phoenix, which traditionally assert 'absolute certainty' in outcome, and employ naturalism as a standard form of verification, are at variance with actuality (Bourke, 1993; Wilson, 1991). The profession's failure to acknowledge the extent of the challenge *within*, represented by forensic science, is paralleled *without*, in the area of media representation.

By contrast, in the different genre of 'faction' or the 'fictionalised fact' film, Evil Angels presented science as a contested discourse whose claims to certainty were precariously based on various cultural and rhetorical practices. In framing science as just one discourse among many, and thereby rejecting its assumed position on top of the hierarchy of discourses, the text positioned and empowered the reader to interrogate science's claims to speak the 'truth'. By dismantling and discounting science's 'validating' strategies, Evil Angels encouraged a scrutiny of law. Exposing science's fallibility led progressively to law's credibility being undermined. In acknowledging the contentious nature of the science/law nexus, as it occurred in an actual case, Evil Angels opened up textual spaces for alternative interpretive accounts or oppositional discourses to form and circulate. The presence of oppositional

discourses offered the possibility for change to occur. This text clearly posed some challenge to law through its interrogation of science, but in this regard it is a very rare text indeed.

This thesis also dealt with expectations, expressed in chapter four, that feminist concerns would be offered textual space within the framework of at least some legal narratives. This assumption arose from feminist critiques of law which in exposing law's patriarchal praxis had resulted in some reform of law. In examining these expectations, the thesis analysed how discourses, ostensibly promoted as 'women's issues', were positioned within the textual hierarchy of discourses. It hypothesised that law's institutional discourse would prevail in such encounters and this proved to be the case, except for the one notable exception, Picket Fences.

At best the thesis identified a degree of recognition by media texts, of the necessity to appeal to a female subjectivity as a integral part of society's audience mix. This was most visible in the selection of genre form, the soap opera; in the choice of narrative subject matter; and also in gender characterisations. Superficially each of the texts, LA LAW, Phoenix, Law of the Land and Picket Fences, demonstrated evidence of feminism as a formational influence. Indeed, critiqued from a perspective other than law, each of these texts could be considered progressive in some aspects. For example, all the women in these texts were presented as occupying roles within the public sphere, and within the work environment they were depicted as naturally skilled and competent professionals. Significantly also, because it is rarely included in masculine narratives, aspects of their private life were seen impacting on their public personnaes. The subject matter of some of the narratives also appeared to

address issues of specific concern to women. The selection of these as issues, actually signified the extent to which they have become, or are in the process of becoming, mainstream societal concerns.

Despite these positive features, textual analysis revealed that the mere raising or airing of an issue, like for example the case of sexual discrimination in LA LAW, did not guarantee support for a feminist viewpoint or imply textual progressiveness. A feminist reading of this text revealed substantial degrees of institutional incorporation within a narrative framed to undermine and discount legitimate feminist aspirations in the area of sexual discrimination. Law was positioned as the discourse of certainty discursively empowered to repress contradictions, represented in the text as women's 'illogical' aspirations, so as to arrive at ideological closure.

Picket Fences, by contrast, foregrounded contradictions in its narrative and characters, and these worked discursively to undermine the power of the two institutions, law and medicine. The obvious fallibility of these institutions was directly apprehended through the narrative incursion of a feminist discourse on sexuality; mature sexuality at that, which is in itself a departure from the 'norm' in terms of what and who is commonly represented. Picket Fences in presenting a disruption between the accepted nexus of knowledge/power and 'truth', offered reading positions which challenged the discourses of dominant ideology in this area. Its representational strategies and rhetorical devices encouraged a critical examination of 'accepted' institutional practices and these marked it as a text, distinct from the rest. These principal features of difference related directly to its genre.

The role of genre.

In textual terms gender concerns emerged most strongly through genre selection. The thesis' hypothesis that genre would be an important determining factor in meaning making, found confirmation in the texts examined. While the findings indicated that none of the texts was specifically engaged in a critique of law per se, there was evidence that some oppositional discourses were indirectly challenging law's hegemony. A common feature of their textual discourses was the obvious correlation between the range of alternative reading positions offered, in other words the polysemy of the text, and the genre type. Typically heteroglossia and the open ended narrative form were characteristic of the cross genre soap/drama text.

The current form of this text which is available, and of which Picket Fence is representative, is noteworthy because of its high quality production values and popularity with viewers. These texts utilise narratives based on serious social issues and link these with representational strategies which offer audiences a sophisticated blend of pleasure and challenge. Currently there are several highly rating examples of this 'progressive' genre mix, available on television.[9]

Genre's "contract" (Fiske, 1987, p. 114), which relates to audiences' expectations of texts, limits meaning by imposing parameters on textual form and content. On a continuum, tightly controlled, formulaic texts appear as regressive whereas the previously cited, cross genre soap forms, are at the progressive end of the scale. In this research project, the most obvious example of the regressive text was Phoenix, which appropriated science as its paradigmatic model. Reproducing the old style TV

cop show with a reliance on a naturalistic documentary style, Phoenix appeared as distinctly arcane and outmoded, especially when compared with its US counterpart NPYD Blue. In this new look, US cop/drama, the emphasis is on a soft-focus visual style with extra narrative weight accorded the feminine-inclusive, soap elements of the drama.

The boundary stretching features of the new cross genre texts demonstrate cognisance of the multiple subjectivities of audiences. In actively promoting a range of discursive reading positions these texts, with their adroit mix of fact and fiction, and serious content with parodic and self reflexive forms, presume a 'sophisticated' social subjectivity on the part of television audiences. Their textual complexity assumes an active, engaged and 'knowing' readership familiar with other television texts and genre types. This presumption contrasts markedly with the 'imagined audience' of Phoenix, and the TV science programme as described by Gardner and Young (1981). Within the science community it is interesting to observe a recent shift in attitude toward the genre of the soap opera. The popularity of the 'soap' commends itself as a resource for science to exploit, as a way of improving science's own public profile. While such initiatives might prove advantageous to science in the short term, this genre's notorious polysemic potential (Fiske, 1987, p. 194) could actually compromise science's current position of cultural dominance.[10]

It was proposed at the outset of this thesis, that television texts represent significant sites where the possibility for social change may be observable. Certainly with Picket Fences, Evil Angels and Making Babies, although their narrative forms and representational strategies were radically different from each other, each text acted as

a "frame within which ... oppositional discourses [could] be heard" (Fiske, 1987, p. 47). The text Making Babies in critiquing the science of reproductive technology, adopted an overtly feminist interpellation within a factual framework. Using a feminist perspective the text sought, by juxtaposing various negative and conflicting representational and rhetorical strategies, to position viewers oppositionally to this particular area of science. Its didactic interpellation however, inclined it toward being highly prejudicial to some readers and invited resistant oppositional responses. Fiske (1987, p. 46) observes that radical texts which eschew anticipated cultural demands for entertainment and pleasure, run the risk of alienating viewers. Instigating social change requires that a balance be struck, between textual pleasure or engagement, and challenge in the form of meaning making.

This necessary balance seems to have been achieved, in the cross genre forms currently being produced in the United States. Their accessibility and popular appeal, masks a range of subversive and genuinely radical discourses which operate within the conventional dominant form. Picket Fences is just one of several boundary extending soap/dramas which work at two levels, as both a genre and a gender mix (Fiske, 1987, p. 113). Those who desire to instigate and promote institutional change need to become involved in the formational agendas of texts such as these. In other words, feminist who seek law reform, should consider the possibility of contributing, as has happened in feminist legal fictions, to feminine genre forms (soap/dramas) which interpellate to a gender mix, rather than those like Phoenix and its successor Janus which replicate an old masculine genre form of closed text, interpellating principally to a male readership.[11]

This thesis' research demonstrates that a receptive vehicle exists, in terms of genre, for addressing institutional hegemony. In terms of readership too, there is a receptive cultural climate familiar with the contradictory demands of the cross genre form. The task is now, to produce texts which are inventive enough to challenge yet pleasurable enough to make the meaning making worth the effort.

As was evidenced in this thesis, calls by feminists for reforms to law have resulted in anomalous outcomes; either reforms have succeeded in reinforcing law's hegemony or they have produced undesirable or unpredictable results (Smart, 1991; Naffine, 1992). The work of this study suggests that law, the institution, might be susceptible to reform initiatives generated from outside that institution. These initiatives could well form the basis of narrative material, from which a range of legal stories for popular culture could be constructed. In recommending such a strategy this study recognises the insightfulness of Graycar's (1994, p. 20) assessment of law, that "there are enormous obstacles to women's stories occupying the same space and ... the same authority as the stock stories which underpin the commonsense of deeply gendered legal discourses." This thesis proposes that these stories can, and indeed should, be told and that popular culture offers both the avenue and the vehicle. The narratives though, should be women's own stories.

Implications

The purpose of the study was to examine whether challenges to law, the institution, were observable within popular culture's audio visual field, particularly television. It was proposed that law's position and status as an institution, and its powerful

discourse of control and regulation, would act as a major impediment to oppositional or alternative positions being granted textual space. This proved to be the case in most of the texts examined. However, an important finding of this study was the identification of a medium, in the new cross genre texts, which accommodates genuinely, in both form and content, a range of oppositional discourses.

In assessing the progressive impact of these texts on potential audiences, this thesis acknowledges a limitation in the lack of audience studies research to support predicted outcomes. While such research is recognised as being an important adjunct to this study, it was beyond the scope of the present project. In recommending these texts as useful vehicles for addressing institutional hegemony, this thesis further recommends appropriate research into audience studies.

Nevertheless the findings of this research project demonstrate that reform possibilities exist in popular cultural forms and that certain genre types provide appropriate frames for referencing new meanings. These findings have significant practical application for reformers, such as Graycar (1990), Naffine (1992) and Smart(1991), who see a real need for change to law but who view law reform as inevitably problematic. In contextualising law within the frame of fictionalised entertainment while utilising the progressive cross genre form, presents audiences with the challenge of reading critically. In practical terms, audiences are offered an opportunity to evaluate oppositional positions, to work out solutions and to deal with uncertainty; all of which provide an opening for "potential discourse[s] of resistance" (Fiske, 1987, p. 70) to form and circulate. It is in the recognition of one's own lack of power and in resisting that situation, that the first "vital step" (p. 70) toward effecting change is begun.

According to the results of this thesis, the new cross genre law texts offer just this potential to those who advocate changes to law, the institution.

APPENDIX

1. The relevant sample material was taken from the Melbourne *Age*, and covered a ten year period from the nineteen eighties to the nineteen nineties. Over this period Cassidy (1993, p. 8) notes not only a substantial increase in "law-centred matters" being covered by the press, but also a change in the way they are being presented.

2. Something of an analogous situation was reported on the front page of (1995, June 24). The West Australian under the heading "Scandal of black and white twins". IVF twins born in Holland of Caucasian parents were shown to be racially different from each other. The storyline advised that one twin, *Teun is white, brother Koen is black.*

3. Within "regimes of representation" Hartley, (1992, p. 46) contends that news has the equivalent status of science, afforded a special position based on a scientific premise that fact and objective representation are more real and hence more likely to be true than fiction.

4. Noted examples include the Chamberlain case, Birmingham Six, Splatt case, Rendell case, cited by Bourke.(1993).

5. The feminist perspective has a more general application too. Its oppositional positioning provides it with a particular perspective which can be utilised to critique other social spaces beyond gender, such as class and race. "(A) feminist approach is able to show the discordance between the legal model of the person and the attributes and needs of social groups other than women" (Naffine, 1992, p. xiii).

6. MacKinnon's assertion is based on a particular feminist position which holds that socially constructed categories and attributes are arbitrarily assigned by gender, with all power automatically being attached to the male, irrespective of race or class.

7. A report of (1993, November 5). The West Australian, p. 5 "Husband Killer Walks Free" stated this was believed to be the first case in WA where the 'battered wife syndrome' had been recognised as a legal defence. It has subsequently been used elsewhere in Australia.

8. Examples include NPYD Blue, Northern Exposure, Picket Fences, ER.

9. Current examples of this 'progressive' genre mix include: Chicago Hope and ER, which routinely explore issues of medical ethics, law, class and race in a medical setting; Northern Exposure, which offers a unique cross cultural mix of issues concerned with race, class, gender, ageism and the environment; NPYD Blue, which examines issues of law, class, race and gender in an urban police setting; The X-Files, which explores many facets of science, the environment and institutional power from a science fiction perspective.

10. "Engineers aim to build new image." "*We have LA LAW but why isn't there LA Engineering to show what they can do and also their personal lives and problems.*" reported quote from Dr Martha Sloan, International President of the Institute of Electrical and Electronic Engineers. (1993, October 15). The West Australian, p. 35.

"Chemist backs soapie message." "*There should be a television soap opera on scientists to make them more human to the general population,*" reported quote from Ben Selinger Professor of Chemistry at ANU. (1993, September 29). The West Australian, p. 9.

"TV series a pull for women vets." "*(T)he series* [A Country Practice] *romanticised the profession, giving it a positive public image which encouraged women to consider veterinary a worthy career,*" reported quote from David Fraser, Dean of Veterinary Science at the University of Sydney. (1994, May 2). The West Australian, p. 31

11. Despite attempts to 'sell' Janus as a text which would appeal to women, 1994, October 9-15th, (TV Extra) p. 20. with the heading, Women Rule in the Battle for the Bar, its masculine genred form makes it similar in appeal to its predecessor Phoenix.

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