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Abstract

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I

Fifty years ago, in the Fall, 1939, issue of *Partisan Review*, Clement Greenberg published an essay titled, *Avant-Garde and Kitsch*.¹ Described by his editors at the time as “a young writer who works in the New York customs house,”² Greenberg would become, along with Meyer Schapiro, Harold Rosenberg, and very few others, universally recognized as one of America’s most significant art critics. His *Avant-Garde and Kitsch* soon became the most influential critical essay ever written within the confines of American art and its culture.³ In his effort to confront the dynamics of cutting-edge artistic production, Greenberg relied upon and effectively deployed three distinct concepts or categories. The first of these was the notion of an *avant-garde*—a cadre engaged in antithetical cultural activity. “It is among the hopeful signs,” Greenberg stated, “in the midst of the decay of our present society that we—some of us—have been unwilling to accept this last phase for our own culture,”⁴ this last phase being equivalent to a “motionless Alexandrianism, an academicism in which the really important issues are left untouched because they involve controversy . . .”⁵ At the same time, overwhelming capitulation to bourgeois values, what Robert Warshaw described in a different context as the broad smile of an id-

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1. Greenberg, *Avant-Garde and Kitsch*, 6 *PARTISAN REVIEW* 34-49 (1939); reprinted in C. GREENBERG, *ART AND CULTURE: CRITICAL ESSAYS* 3-21 (1961); 1 CLEMENT GREENBERG: *THE COLLECTED ESSAYS AND CRITICISM* 5-22 (J. O'Brian ed. 1988).

2. Clark, *Clement Greenberg's Theory of Art*, in POLLOCK AND AFTER: *THE CRITICAL DEBATE* 47, 48 (F. Frascina ed. 1985).

3. See I. SANDLER, *THE NEW YORK SCHOOL: THE PAINTERS AND SCULPTORS OF THE FIFTIES* (1978); D. ASHTON, *THE NEW YORK SCHOOL: A CULTURAL RECKONING* (1973); Frascina, *Introduction*, POLLOCK AND AFTER: *THE CRITICAL DEBATE* (F. Frascina ed. 1985).

4. GREENBERG (1961), *supra* note 1, at 4.

5. *Id.*

iot,⁶ spread across the face of American culture and this "rear-guard"⁷ was constituted by, according to Greenberg, "that thing to which the Germans give the wonderful name of *Kitsch*: popular, commercial art and literature with their chromeotypes, magazine covers, illustrations, ads, slick and pulp fiction, comics, Tin Pan Alley music, tap dancing, Hollywood movies, etc. etc."⁸ *Kitsch* represents, of course, that thing to which Americans have given the democratic label "popular culture."⁹

The final, less obvious but still essential, category used by Greenberg was that of the *political*: the social and historical moment of American capitalism. There could be no confusing the straightforward Marxist perspective of America's most persuasive and original critic of contemporary painting and sculpture. After quoting at length from Greenberg's identification of the avant-garde as an aspect of revolutionary thought in Europe, T. J. Clark adds: "By this last he means, need I say it, preeminently the thought of Marx, to whom the reader is grimly directed at the end of the essay, after a miserable and just description of fascism's skill at providing 'art for the people'. . . ."¹⁰ Had the future champion of the work of the Abstract Expressionists really directed his readers to the revolutionary criticism of Marx? Here is how Greenberg concludes his essay, "Avant-Garde and *Kitsch*":

Here, as in every other question today, it becomes necessary to quote Marx word for word. Today we no longer look toward socialism for a new culture—as inevitably as one will appear, once we do have socialism. Today we look to socialism *simply* for the preservation of whatever living culture we have right now.¹¹

In his political critique of American culture, Greenberg analyzes the relationship between state and society in terms of elite and popular culture, but it is just as easy to slightly shift focus and argue that "[t]he distinctive relationship between state and society is reflected in the le-

6. Warshow, *Movie Chronicle: The Westerner*, in *THE IMMEDIATE EXPERIENCE* (1971); see *FILM GENRE READER* (B. K. Grant, ed. 1986).

7. GREENBERG (1961), *supra* note 1, at 9.

8. *Id.*

9. See P. BRANTLINGER, *BREAD AND CIRCUSES: THEORIES OF MASS CULTURE AS SOCIAL DECAY* (1983); I. CHAMBERS, *POPULAR CULTURE: THE METROPOLITAN EXPERIENCE* (1986); *MEDIA, CULTURE AND SOCIETY: A CRITICAL READER* (R. Collins, J. Curran, et al. eds. 1986).

10. Clark, *supra*, note 2, at 48.

11. GREENBERG (1961), *supra* note 1, at 21.

gal order."¹² Thus we have a clearcut juxtaposition of a high art organized around "practices of negation,"¹³ a state-endorsed popular culture "using for raw material the debased and academicized simulacra of genuine culture,"¹⁴ and a political backdrop now hidden, now revealed, by the legal order—in short: avant-garde, kitsch and law.

II

Two elements of Greenberg's analysis stand up well. First, he was dead right in his Marxian critique of American society, what Bruce Cumings calls "liberal totalitarianism,"¹⁵ an increasingly stagnant and declining world power in desperate embrace of stock speculation, flag burning amendments, and arts control legislation by day, as well as Gestapo-like destruction of public sculpture and invasion of undefended foreign republics by night, which subject both life and art to a ritualized domination by the masters of technology and violence.¹⁶ Second,

12. Arnason, *The Modern Constellation and the Japanese Enigma*, 17 THESIS ELEVEN 4, 24 (1987); see THE POLITICAL ECONOMY OF LAW (Y. Ghai, R. Luckham & F. Snyder eds. 1987); P. Q. HIRST, LAW, SOCIALISM AND DEMOCRACY (1986).

13. Clark, *supra* note 2, at 55.

14. GREENBERG (1961), *supra* note 1, at 10.

15. Cumings, *Who We Are in 1989: Northeast Asia*, 21 BULLETIN OF CONCERNED ASIAN SCHOLARS 196 (1989); see B. CUMINGS, THE ORIGINS OF THE KOREAN WAR: LIBERATION AND THE EMERGENCE OF SEPARATE REGIMES 1945-1947 (1981).

16. See, e.g., A. COCKBURN, CORRUPTIONS OF EMPIRE (1987); PUBLIC ART, PUBLIC CONTROVERSY: THE TILTED ARC ON TRIAL (1987); D. SILVERMAN, SELLING CULTURE: BLOOMINGDALE'S, DIANA VREELAND, AND THE NEW ARISTOCRACY OF TASTE IN REAGAN'S AMERICA (1986); Chase, *Cockburn on Empire*, 40 MONTHLY REV. 51 (1988); Cooper, *Puppet Show*, VILLAGE VOICE Jan. 9, 1990, at 21; Hochfield, *Caught in the Crossfire: Art and the NEA*, ARTNEWS, Jan. 1990, at 146; Solomon, *Our Most Notorious Sculptor*, N.Y. Times, Oct. 8, 1989 (Magazine) at 38; see also, Garten, *Japan and Germany: American Concerns*, 68 FOREIGN AFF. 84, 90 (1989-90):

Recessions have come and gone, of course, but this time Washington lacks the usual tools to dig its way out. In the past, for example, it could increase government spending and stimulate consumer demand. Now, however, existing budget deficits are so large that any more spending would create fiscal havoc. In the past, the Federal Reserve could have lowered interest rates to spur investment. But with deficits and debt putting the dollar in so precarious a position, an easier monetary policy could encourage foreign holders to dump their dollar holdings and send the greenback into a free fall.

Lipietz, *The Debt Problem, European Integration and the New Phase of World Crisis*, 178 NEW LEFT REV. 37, 37 (1989):

'The Old' is the economic order which, since the Korean War and under

he was correct in attributing considerable capacity to avant-garde culture to negate the petrified wisdom of the zombies who run the show. It was precisely the group of abstract artists first promoted by Greenberg who generated so sharply adversarial an arts community in New York in the nineteen-forties and nineteen-fifties;¹⁷ and it was in the arts review, *Possibilities*, that Harold Rosenberg and Robert Motherwell asserted that "[n]aturally, the deadly political situation exerts an enormous pressure,"¹⁸ adding that "[i]n his extremism, [the avant-garde painter or writer] shows that he has recognized how drastic the political presence is."¹⁹ A few years earlier, in 1944, Motherwell had contended that

[t]he remoteness of modern art is not merely a question of language, of the increasing 'abstractness' of modern art. Abstractness, it is true, exists, as the result of a long, specialized internal development in modern artistic structure. But the crisis is the modern artists' rejection, almost *in toto*, of the values of the bourgeois world. In this world modern artists form a kind of *spiritual underground* . . . The social condition of the modern world which gives every experience its form is the spiritual breakdown which followed the collapse of religion. This condition has led to the isolation of the artist from the rest of society. The modern artist's social history is that of a spiritual being in a property-loving world.²⁰

the aegis of Pax Americana, allowed the developed capitalist countries twenty years of unprecedented growth. This order has now broken down and the search for a new model of growth, for a new international order, has been proceeding by a process of trial and error. The financial crash of 1987 merely revealed the obstacles which made illusory the previously attempted solutions.

MacEwan & Tabb, *The Economy in Crisis: National Power and International Instability*, 19 SOCIALIST REVIEW 57, 67 (1989):

A primary feature of the current international disarray has been a relative decline in the position of the U.S. Conflicts of the 1950s and 1960s that undermined U.S. hegemony weakened the stability of the world economy, ushered in an era of relative stagnation, and set in motion a period of crisis.

17. See, Greenberg, "American-Type" Painting, in ART & CULTURE: CRITICAL ESSAYS 208-29 (1961); D. ASHTON, *supra* note 3.

18. ROSENBERG & MOTHERWELL, POSSIBILITIES 1 (1947-48), quoted in READINGS IN AMERICAN ART SINCE 1900: A DOCUMENTARY SURVEY 129 (B. Rose ed. 1968).

19. READINGS IN AMERICAN ART, *supra* note 18, at 130.

20. Motherwell, *The Modern Painter's World*, DYN, VI (1944), quoted in READINGS IN AMERICAN ART, *supra* note 18, at 131.

"Greed," says the investment broker in Oliver Stone's popular movie, *Wall Street* (1988), repeatedly presented in panoramic surveys of the decade as the emblematic persona of America in the nineteen-eighties, "for lack of a better word, is good."²¹ The "spiritual being in a property-loving world" ought reasonably to have been driven to an art of fierce resignation or absolute defiance by the new aristocracy of Reagan and Bush. But this was not necessarily the case and helps reveal some of the ways in which Greenberg's 1939 critique of avant-garde culture did not adequately anticipate events.

It may be, of course, that even at the time, Greenberg unrealistically opposed avant-garde to popular culture.²² Perhaps the two were

21.

The participants in the 1980s aristocratic movement do not share with their Gilded Age predecessors a commitment to the presumed unity between wealth and obligation, and no longer engage in social legitimation through civic education projects. The Gospel of Wealth under Ronald Reagan worships material success and self-centered individualism, and consigns the Social Gospel to the dustbin of 'dependency.' Further, the Reaganite aristocratic project unites the sphere of historical culture and conspicuous consumption kept separate by Gilded Age elites. Veblen's early twentieth-century giants of industrial capitalism have been replaced by the directors of advanced consumer capitalism, for whom conspicuous consumption has a very different meaning and function.

D. SILVERMAN, *supra* note 16, at 17.

22. Rather than being opposites, avant-garde and popular culture may complement each other; see, e.g. Crow, *Modernism and Mass Culture in the Visual Arts*, in POLLOCK AND AFTER: THE CRITICAL DEBATE 233-34 (F. Francina ed. 1985):

From its beginnings, the artistic avant-garde has discovered, renewed, or re-invented itself by identifying with marginal, 'non-artistic'; forms of expressivity and display—forms improvised by other social groups out of otherwise devalued or ephemeral commodities. . . . For both Manet and Baudelaire, can we separate their invention of powerful models of modernist practice from the seductive and nauseating image the modern city seemed to be constructing for itself?. . . The identification with the social practices of mass diversion—whether uncritically reproduced, caricatured, or transformed into abstract Arcadias—remains a durable constant in early modernism. . . . Even the most austere and hermetic twentieth-century abstractionist, Piet Mondrian, in his final 'Boogie-Woogie' series, anchored the results of decades of formal research in a delighted discovery of American traffic, neon, and commercialized black music. In recent history, this dialectic has repeated itself more vividly in the paintings, assemblages, and happenings of the artists who arrived on the heels of the New York School: Johns, Rauschenberg, Oldenburg, and Warhol.

Also, compare the following observations. Greenberg quotes Dwight MacDonald: "Why after all should ignorant peasants prefer Repin (a leading exponent of Russian

not entirely at loggerheads to begin with. In any event, it is evident from our vantage point today that Greenberg underestimated the capacity for avant-garde art—even avant-garde alienation—to themselves become commodified within the political economy of American culture. To be sure, Greenberg had no illusions about the relation between the avant-garde and its “social basis,”²³ observing candidly that

[n]o culture can develop without a social basis, without a source of stable income. And in the case of the avant-garde, this was provided by an elite among the ruling class of that society from which it assumed itself to be cut off, but to which it has always remained attached by an umbilical cord of gold.²⁴

But this “real paradox”²⁵ was nevertheless, for Greenberg, the necessary source of survival for the avant-garde, not the source of its likely transformation into a commodity—into just another expression of kitsch.

In the wake of Abstract Expressionism’s “financial success,” however, as well as the shift in the center of the world art market to the United States and the gradual eclipse of the avant-garde,²⁶ it is now

academic kitsch in painting) to Picasso. . . . [I]f the masses crowd into the Tretyakov (Moscow’s museum of contemporary Russian art: kitsch), it is largely because they have been conditioned to shun ‘formalism’ and to admire ‘socialist realism.’” Dwight Macdonald, *quoted in* GREENBERG (1961), *supra* note 1, at 12-13 (emphasis added).

The rise of Abstract Expressionism to its leadership of the avant-garde, and from there to its position of official art, is replete with irony. First, because the very term ‘avant-garde,’ as proudly vaunted as Baudelaire’s ‘modernism,’ was first used in art by *socialist* artists in the nineteenth century, and its meaning then was very close to what we have come to call *Social Realism*.

Shapiro & Shapiro, *expressionism: The Politics of Apolitical Painting*, in POLLOCK AND AFTER: THE CRITICAL DEBATE 135, 147-48 (latter emphasis added) (F. Francina ed. 1985). Thus both avant-garde and kitsch can, in a sense, be made equal to an independent, third term: social or socialist realism.

23. GREENBERG (1961), *supra* note 1, at 8.

24. *Id.*

25. “The paradox is real. And now this elite is rapidly shrinking. Since the avant-garde forms the only living culture we now have, the survival in the near future of culture in general is thus threatened.” *Id.*

26. *See, e.g.* Rosenberg, *What’s New: Ritual Revolution*, in ART ON THE EDGE: CREATORS AND SITUATIONS 251 (1975). “It is inherent in modernism, in art as in politics, that the desire for an avant-garde persists even when all avant-gardes have vanished or grown tiresome.” *Id.*

apparent that virtually *all* art practice has been brought within the commodity culture and given the character of kitsch. In a recent American Council for the Arts report, Richard H. Brown observes:

Art has become a commodity. It is now purchased not so much for use value as for exchange value. No longer an item of merely aesthetic, political or commemorative significance, it has become an investment. This quite recent historical development has profoundly affected the artist. Today's artist is no longer seen as a craftsman, as in preindustrial times, nor as the seer or desperado pictured in the romantic counterimage of the industrial era. The commodity market for art has created a star system in which the successful artist has become both a mass-producer of icons for sale as investments and a commodity himself.²⁷

This sounds a good deal like Greenberg's analysis, but of *kitsch* rather than the avant-garde's practices of negation. "Currently, some artists are striking back," adds Brown, "by representing in their art, with conscious irony, the very system that seeks to debase them and their works, but even these protest pieces tend to become commodities."²⁸ So much for the contemporary catch-22 in which the avant-garde finds itself trapped.²⁹

Finally, if Greenberg underestimated the ability of consumer society to render ineffective the critical practice of avant-garde culture, he may also have underestimated the ability of popular culture to complete an opposite move: to escape the totalitarian role assigned to it by the rulers³⁰ and perform its own negative or critical functions within

27. R. H. Brown, *Art as a Commodity*, in *THE MODERN MUSE: THE SUPPORT AND CONDITION OF ARTISTS* 13, 13 (C. R. Swaim ed. 1989); see McGuigan, *The Selling of Andy Warhol*, *NEWSWEEK*, April 18, 1988 at 60; Myers, *The Art Biz*, *N.Y. REV. BOOKS*, Oct. 13, 1983 at 60; Ratcliff, *The Marriage of Art and Money*, *ART IN AMERICA* 76 (July, 1988).

28. Brown, *supra* note 27, at 14.

29. See, e.g., P. BURGER, *THEORY OF THE AVANT-GARDE* (M. Shaw trans. 1984); H. HAACKE, *FRAMING AND BEING FRAMED* 121 (1975); Piccone, *The Crisis of One-Dimensionality*, 35 *TELOS* 43 (1978); Luke, *Culture and Politics in the Age of Artificial Negativity*, 35 *TELOS* 55 (1978).

30. See, e.g., GREENBERG (1961), *supra* note 1, at 19:

Where today a political regime establishes an official cultural policy, it is for the sake of demagogy. If kitsch is the official tendency of culture in Germany, Italy and Russia, it is not because their respective governments are controlled by philistines, but because kitsch is the culture of the masses in these countries, as it is everywhere else. The encouragement of kitsch is

particular social and historical conjunctures.³¹ Having thus established, at least in outline, the need for revision of Greenberg's critique of *avant-garde and politics*, given the fact, as true of the world-system today as it was in Marx's time that "no social order ever disappears before all the productive forces, for which there is room in it, have been developed"³² we now turn to a much more detailed examination of *kitsch and politics*, or more specifically: popular culture and the legal order.

III

Although the relation between popular culture and the law has only recently begun to receive concentrated, scholarly attention,³³ that relation preexisted not only Greenberg's 1939 critical intervention but the nineteenth century's invention of the *avant-garde* as well. Indeed, popular legal culture was there all the time. From the pamphlets and broadsides, tavern ballads, and political cartoons of the American Revolution, to the blockbuster movies, "reality television," and rock music videos which characterize contemporary public life, popular culture has always provided the mass audience with a unique point of access to images and ideas about law and American lawyers. Given the

merely another of the inexpensive ways in which totalitarian regimes seek to ingratiate themselves with their subjects.

Milchman, *Book Review*, 6 *SOCIALISM & DEMOCRACY* 198, 203 (1988): "The supposed evidence of a mass media awash with the rumblings of anti-capitalist discontent and subversion, reflecting the creativity of the masses in their daily lives, strikes me as so much evidence for the totalitarian domination of capitalism over the 'leisure' activity of the mass of the population."

31. See, *POPULAR CULTURE IN AMERICA* (P. Buhle ed. 1987); Chase, *An Obscure Scandal of Consciousness*, 1 *YALE J.L. & HUMANITIES* 105, 114-19 (1988).

32. K. MARX & F. ENGELS, 1 *SELECTED WORKS IN TWO VOLUMES* 363 (1955), quoted in R. A. MEDVEDEV, *THE OCTOBER REVOLUTION* 57 (G. Saunders trans. 1979).

33. For bibliographic reference, see Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 1986 *AM. B. FOUND. RES. J.* 281; Chase, *On Teaching Law and Popular Culture*, 3 *FOCUS ON LAW STUDIES: TEACHING ABOUT LAW IN THE LIBERAL ARTS* 7 (1988); Chase, *Toward a Legal Theory of Popular Culture*, 1986 *WIS. L. REV.* 527. For interesting new work in the field of popular culture studies, see J. BURCHILL, *GIRLS ON FILM* (1986); N. CARROLL, *MYSIFYING MOVIES: FADS AND FALLACIES IN CONTEMPORARY FILM THEORY* (1988); L. W. LEVINE, *HIGHBROW/LOWBROW: THE EMERGENCE OF CULTURAL HIERARCHY IN AMERICA* (1988); E. M. MIZRUCHI, *REGULATING SOCIETY: BEGUINES, BOHEMIANS, AND OTHER MARGINALS* (1983); M. RYAN & D. KELLNER, *CAMERA POLITICA: THE POLITICS AND IDEOLOGY OF CONTEMPORARY HOLLYWOOD FILM* (1988).

appearance over half a century ago of Thurman Arnold's classic *The Symbols Of Government*³⁴ and *The Folklore Of Capitalism*³⁵, it would be incorrect to imply that a recent focus upon popular legal culture is entirely new. Yet there appears to have developed over the last few years a sharpened or quickened interest (among writers from various disciplines) in coming to terms with what Americans think about law, courts, or constitutional rights by examining artifacts of *popular* legal consciousness.

Historians, legal scholars, sociologists, and film critics have brought different concerns and approaches to the field. "Ordinary citizens derive their impressions of the legal system," asserts historian Max Bloomfield, "largely from the newspapers and magazines they read, the novels they buy, the movies and television programs they watch."³⁶ Taking a close look at the relationship between public values and the "idea of legal meaning as multiple and contestable,"³⁷ while utilizing materials from labor movement legislative initiatives, American family law, and an "obscure New York pig-law case,"³⁸ legal scholars Forbath, Minow, and Hartog seek to "highlight the contribution to the meaning of law made by people with no official roles in the hierarchy of legal authority,"³⁹ yet who may well represent an ultimately decisive popular legal viewpoint. Legal sociologist Stewart Macaulay argues that if we are going to "understand people's knowledge of and attitudes toward the legal system," we need to "look beyond the behavior of judges [and] lawyers" and try to visualize the landscape of popular legal consciousness itself.⁴⁰ Social and political "attitudes are formed, influenced, and reinforced by boring and colorless high school history books, arbitrary exercises of authority by teachers and coaches, episodes of *Miami Vice*, and morality plays staged by organizations such as the Badgers, Bucks, Brewers, and Packers."⁴¹ Film critic Kathleen Rowe, following up Macaulay's reference, argues that (taken to-

34. T. ARNOLD, *THE SYMBOLS OF GOVERNMENT* (1935).

35. T. ARNOLD, *THE FOLKLORE OF CAPITALISM* (1937).

36. Bloomfield, *Law and Lawyers in American Popular Culture*, in C. SMITH, J. MCWILLIAMS & M. BLOOMFIELD, *LAW AND AMERICAN LITERATURE* 125, 127 (1983).

37. Forbath, Hartog & Minow, *Introduction: Legal Histories From Below*, 1985 WIS. L. REV. 759, 759.

38. *Id.* at 760.

39. *Id.*

40. Macaulay, *Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports*, 21 LAW & SOC. REV. 185, 186 (1987).

41. *Id.*

gether) Miami and Los Angeles “map the American psyche in terms of power and ideology” and confront audiences with

[T]he alluring violence, the seductive dreamlike world of *Miami Vice*, the underside of power that one hour later is tamed, humanized and ‘yuppified’ in *L.A. Law*. In the terms of anthropologist Claude Levi-Strauss, the power that is raw in *Miami Vice* is cooked with platitudes and ideology in *L. A. Law*; the law of the streets and the jungles of South America refined into leatherbound legal volumes and robed judges.”⁴²

While not ambitious enough to draw upon the structuralist theories of investigators like Claude Levi-Strauss,⁴³ the following comments do try to extend the developing critique of popular visual art a bit further into the legal terrain, somewhat more deeply into the forbidding realm of the American criminal justice system, as observed through the eye of the camera.

IV

“I can’t. I’ve got Lady Godiva in two minutes,” replies *L. A. Law*’s resident prosecutor, Grace Van Owen (Susan Dey), to an amorous proposition from attorney Michael Kuzak (Harry Hamlin) that she accompany him to Chinatown for breakfast. “Excuse me?” inquires Kuzak. “A stripper,” says Van Owen, shuffling folders around her office, “she’s filing charges against three lawyers who apparently went too far with the unveiling.” “Oh,” says the skeptical Kuzak, “sounds like a real winner to me.” Van Owen almost agrees: “Well, I don’t know . . . I’ll listen to what she has to say but I’m thinking about kicking it.” The teenage, strip-o-gram delivery girl, on her first expedition in a new job, turns out to have been sufficiently abused by “party animal” lawyers in their Century City office—behind doors conveniently locked against her exit—that Van Owen decides to press on

42. Rowe, *Power In Prime Time: Miami Vice and L. A. Law*, 33 JUMP CUT 20, 20 (1988).

43. See R. GUIBERT, SEVEN VOICES: SEVEN LATIN AMERICAN WRITERS TALK TO RITA GUIBERT 421 (F. Partridge trans. 1972): “Guibert: *Can you say something about the works of Levi-Strauss?* Guillermo Cabrera Infante: They seem to be excellent. Very durable. I’ve had two for several years, although I wear them almost every day. Guibert: *Two? Two what?* Infante: Pairs of trousers, of *Levi’s*, made by Levi-Strauss and Co. of San Francisco.”

with young Ms. Morris's case. Surprised, and obviously impressed by the woman's sincerity and sense of outrage, Van Owen concludes the interview: "If you're prepared to go all the way with this, so am I."

But these brave words preface a chapter of *L. A. Law* more complicated than either complaining witness or state's attorney probably anticipate. Morris is made to feel degraded as much in court as out, as much during cross-examination as during her initial confrontation with the defendants who now stand accused of sexual battery. Van Owen is subjected to greater pressures than Kuzak's initial and casual skepticism. "We're talking three lawyers, families, nice careers," Van Owen's superior in the district attorney's office explains to her. "A felony conviction," he continues, "means getting hauled before the bar on moral turpitude—they could get suspended or worse." When Van Owen fails to show sympathy for the defendants, her boss becomes aggravated: "What is this, some kind of feminist chip on your shoulder?" "What is that supposed to mean?" responds Van Owen, though the meaning is clear enough. "This is a stupid case," asserts the male prosecutor, "we shouldn't be taking this to trial. I'm going to ask you to get off your soap box here and dispose of this case." Neither this clear instruction nor the practical joke played on Van Owen by her male colleagues in the state attorney's office—who send *her* a surprise strip-o-gram at work—manage to derail her commitment to steamrolling the opposition. A serious obstacle seems placed across the tracks when an old pal of Van Owen's in the prosecutor's office, a *woman* ("It's nice to see you now," says Grace, "I could use a friendly face"), actually joins the enemy: "You know, everybody in the office is grumbling that you have become some kind of humorless, radical feminist . . . What you're doing only reinforces their attitude that the girls can't be one of the guys . . . Sometimes you've got to go along to get along." Grace expresses her disappointment at Sarah's failure to back her up in no uncertain terms, conceivably ending their friendship, and (back in court) provides the kind of closing argument to the jury that causes middle-aged viewers of *L. A. Law* to recall the pioneering social relevance and television seriousness of lawyer dramas like *The Defenders* (1961-65) and hard-hitting serials like *East Side, West Side* (1963-1964). "You did it," exclaims Ms. Morris after the jury returns with unanimous verdicts of guilty against all three attorneys, and Van Owen replies, "You did it." "I just want you to know that I'm going to remember you the rest of my life," says Morris, and Van Owen repeats, "I don't think I'll be forgetting you either." The way in which Grace replicates the younger woman's feelings in this pair of exchanges is a metaphor for the way in

which Van Owen has, to a degree, replicated Ms. Morris's sense of anger, built the structure of her own moral commitment to prosecuting this crime upon that of its female victim. When the two women embrace as the courtroom empties (and the convicted attorneys are told when to appear for sentencing), it is clear that it is not the relationship between women attorneys (e.g., Van Owen and the prosecutor, Sarah, who told her to "cool out"; Van Owen with the woman member of the team of defense lawyers) but, rather, the relationship between the woman attorney and the woman crime victim which provides the dramatic dynamo energizing this particular episode of *L. A. Law*.⁴⁴

Moreover, it is this specific relationship which links *L. A. Law* to Jonathon Kaplan's film, *The Accused* (1988). Admittedly, *L. A. Law*'s story of a young woman's right to retrieve her dignity represented but a single strand in the continuing saga of McKenzie, Brackman.⁴⁵ Further, the *L. A. Law* serial has received, of course, its share of criticism, including dissatisfaction with its gender politics.⁴⁶ But *L. A. Law* at its best and the motion picture, *The Accused*, both seem to provide a feminist critique of the operation of the criminal justice system which is more progressive than the conventional wisdom of American culture.⁴⁷

44. This episode had a story by Steven Bochco and Terry Louise Fisher and was directed by Rick Wallace. Terry Louise Fisher served as Supervising Producer.

45. The same episode included Arnie Becker's overhearing two women refer to him as having a "body by Pillsbury" and coping with the ensuing emotional fallout, Douglas Brackman's painful hours spent anxiously awaiting the verdict from an HIV blood test, etc.

46. See, e.g., Mayne, *L. A. Law and Prime-Time Feminism*, DISCOURSE: JOURNAL FOR THEORETICAL STUDIES IN MEDIA AND CULTURE, Spring-Summer, 1988, at 30. Mayne specifically provides a different reading of the episode of *L. A. Law* discussed here as a result of her emphasis upon the way in which "[i]ndividual episodes of *L. A. Law* tend to include anywhere from two to four major storylines, at least one of them a courtroom trial. The storylines are complicated not only by the relations between them, but also by the overlapping personal and professional lives of the lawyers." *Id.* at 36. Apparently regarding the impact of the closing sequence as sufficient to erode the central storyline (the courtroom trial of the attorneys charged with sexual battery), Mayne suggests that her

point was made strikingly in a second season episode in which Grace Van Owen was accused of being a 'humorless radical feminist' in her defense of a teenage stripper sexually molested by a group of lawyers. In the concluding shot of the episode, Van Owen and Kuzak inhale helium from a balloon and talk in funny voices as they embrace, so that at least the 'humorless' and 'radical' parts are temporarily dispelled.

Id. at 44.

47. For extremely important feminist critique, see S. ESTRICH, *REAL RAPE*

Indirectly based on the Big Dan's Bar rape trial in Massachusetts, a trial broadcast live by public television, *The Accused* again presents a somewhat self-satisfied, upper-middle class female prosecutor whose professional and personal situation is turned upside down by a victim of sexual violence against women, someone difficult to fathom at first because she is from a working-class background. But after the prosecutor has a civilized dinner party broken up by an enraged crime victim transparently displeased with the plea bargain in her case, the state's attorney (Kelly McGillis) and the rape victim, (Jodie Foster, who won an Academy Award for this role), develop a sense of mutual trust which serves them well during the difficult trial ahead.

The film is more complicated than one with a simple opposition between women and men, and like the *L. A. Law* episode discussed above, some of the women characters equivocate: a waitress at the bar who can provide key testimony at trial is clearly reluctant to do so; there is not surprisingly a woman defense attorney in the film who attempts to place blame on the victim. Although the inclusion of a graphically violent staging of the crime itself makes *The Accused* an especially grim picture for most audiences, its resolution, like *L. A. Law*, finds the women characters triumphant. Their solidarity pays off with a guilty verdict. A line is thus drawn on the traditional acceptance of sexual crimes against women as part of the nature of things, somehow not worth exhausting criminal justice resources to try to deter.

V

Shakedown, (1988), like *L. A. Law* as well as *The Accused*, includes a particularly strong woman character in the form of an assistant district attorney. Susan Cantrell (Patricia Charbonneau) performs a function in *Shakedown* similar to that of Debra Winger's character in *Legal Eagles* or even that of Mrs. Christine Manson, wife of Dr. Andrew Manson, in King Vidor's 1938 film version of A. J. Cronin's novel, *The Citadel*. She is keeper of the conscience, moral lightning rod for a professional husband/boy friend who may become lost in the turbulence of clashing public and private obligations and desires. Tempted to abandon a criminal client he believes is innocent and ready to move into corporate legal practice via a well-chosen marriage to the name partner's daughter, Roland Dalton (Peter Weller) momentarily re-

(1987); C. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987).

trieves an old liaison with Cantrell. Having breakfast on her porch above the streets of Manhattan and looking out over a vista of Central Park, Cantrell challenges her old flame: "So you're going to take fourteen years of legal aid and chuck it out the window?" "You don't get it do you," replies the irritated public defender, "I mean you got me as some kind of retrograde Clarence Darrow or something . . . You keep thinking I'm leaving legal aid because I want to be something else? I'm out'a here babe because it's kicking the life out of me . . . So what if I want things, *Susan*. People want shit, you know. I want things!"

But *Shakedown* has more in common with *True Believer* (1989) and *The Thin Blue Line* (1988) than it has with *L. A. Law* or *The Accused*. The woman prosecutor in *Shakedown* is critical to Dalton's renewed commitment to fighting the good fight but she is not at the dramatic center of the film. What *Shakedown* has in common with *True Believer* and *The Thin Blue Line* is that it represents ultimate criminality not in the form of sexually abusive male attorneys or even a gang of drunks in a bar cheering on a rape; not in the form of urban youth gang members selling drugs and knifing their opponents or, even, the random savagery of serial killing; but rather in the precise, calculated, almost impersonal logic of state violence and terror: the criminal conspiracies perpetrated by police and prosecutors and the shadowy forces standing behind them. The truth does finally emerge in two of these films—in a sense, from *The Thin Blue Line* as well. In *Shakedown*, not a very well made film and one, certainly, with a great deal of sensationalism and brutality, the finale is virtually a kind of *Smokey and the Bandit* or *Blues Brothers* auto smash-up cartoon. Having stuck with his client and nearly been executed by the police for his zealotness, Dalton crashes a taxicab into the official cordon blocking his entry to court where he plans, exculpatory evidence in hand, to save the defendant from conviction. The police attempt to arrest him on the spot (and, no doubt, prepare an accident for him) as the cover-up continues. But Judge Maynard (Augusta Dabney) parades into position between Dalton and the secretly drug-dealing police. She then announces: "On the streets you are the law but on the steps of this courthouse, I am the law. If this police officer does not lower his gun," the robed judge instructs her bailiff, "arrest him for obstructing justice." To be sure, Mr. Big, the hoodlum who wears fancy clothes and rules over a criminal empire where cops are mere errand boys, is not brought down to earth and back to justice without pyrotechnics. He is not subjected to the rule of law without some extra-legal crime fighting by a lawyer/rogue cop buddy team, a team which turns up in modified form in films as

different from each other as *Dirty Harry* and *Mississippi Burning*, or without modification in works of popular art as different as the television serial, *Crime Story*, and the bestselling novel, *Presumed Innocent*.⁴⁸

VI

Generally received by the critics as an extremely well-made and well-acted film, *True Believer* revolves upon the intense characterization James Woods provides politically hip, criminal defense attorney Eddie Dodd.⁴⁹ The professional conscience elsewhere provided by Christine Manson or Susan Cantrell, by Laura Kelly and Chelsea Deardon in *Legal Eagles*, and by crime victims in *L. A. Law* and *The Accused*, becomes a kind of moral Marshall Plan in *True Believer*. The film includes an idealistic young lawyer right off the University of Michigan Law Review staff, a private investigator who still clings to her faith in Dodd, and the immigrant mother of an unjustly convicted Korean-American youth,⁵⁰ all of whom commit their complete energy and resources to waking up Eddie from his marijuana-induced indifference and reminding him that the words of the Constitution mean something—or at least *should*. *True Believer*, according to *New Yorker* film critic Pauline Kael, “can be said to be about Dodd’s finding his lost ideals, but it’s basically about pace and drive. The director doesn’t use the movie to congratulate himself on sharing Eddie’s ideals; he uses it to make us share the excitement of Eddie’s recovering those ideals.”⁵¹ Of course it can be argued that director Joseph Ruben’s emphasis upon the medium rather than the message makes the message about keeping in touch with the progressive if, perhaps, idealistic values of youth more self-effacing and thus provisionally attractive than would have been the case were the message constantly given center stage. This may be Ruben’s own way of responding to the old Hollywood adage, “If you have a message, send it by Western Union.”

But there is, I think, another way to look at *True Believer*, beyond noting Eddie Dodd’s revitalized radicalism or the “marriage of purpose

48. See Chase, *supra* note 31, at 122-26.

49. See, e.g., Schickel, *Beyond the Fringe*, TIME, Feb. 20, 1989, at 94.

50. She seems modelled on the mother of another innocent prisoner in Henry Hathaway’s 1948 film, *Call Northside 777*.

51. Kael, *The Current Cinema: Marriages*, THE NEW YORKER, Feb. 20, 1989, at 95, 96.

and adrenaline"⁵² which keeps the film hurtling forward to its conclusion, the release of Shu Kai Kim from Sing Sing. Consider the significance of actor Kurtwood Smith's role as District Attorney. Eddie Dodd first begins to wonder if Shu Kai Kim may not actually have been framed when the district attorney, out of the blue, offers to let the Korean convict out of jail in a few years if Dodd refrains from trying to reopen the case. This deal, this bargain, represents a proffered trade-off. It is designed by Kurtwood Smith to keep under wraps the *real* trade-off, the original Machiavellian justification for the state's decision to frame Shu Kai Kim for a murder actually committed by a valued police informant. "The end justifies the means," a classic prescription for official tyranny from Orson Welles' extraordinary motion picture, *Touch of Evil*,⁵³ through the grand conspiracy underlying the real life Iran-Contra affair,⁵⁴ may represent the ultimate focus and concern of *True Believer*. Kurtwood Smith's bone-chilling defense of his conduct (in court, at the climax of Shu Kai Kim's new proceeding)—the choice of evils which he resolved by subordinating the young gang member's legal rights to reasons of state which must (in the end) trump abstract individualism—is reminiscent of a speech Kurtwood Smith made in his last major film role prior to *True Believer*, that of a CIA-linked, Oliver North-style soldier of freedom, in William Tannen's *Flashpoint* (1984). Masquerading as Inspector Carson, a supposed DEA agent, Smith asks Kris Kristofferson (playing a southwest border patrol guard): "You don't actually believe you're doing something worthwhile out here, do you?" Kristofferson denies that he has exiled himself to the desert because he was not tough enough to handle the post-Vietnam pressures of undercover counter-insurgency. No, it was the politics that he says got to him. "Politics!" exclaims Smith, "This whole fucking nation is politics . . . You work for the same law that pays all our salaries: the law of supply and demand. Think about it whiz kid . . . that's the American way, pal. Supply and demand. And when the supply is lacking, you create it." Whether it is fear of drug-related street crime or of illegal immigration or of subversion and terrorism, the government creates it—*must* create it—since it is the function of the state to engineer social consensus and insulate power from criticism, hopefully even from

52. *Id.*

53. See TOUCH OF EVIL (T. Comito ed. 1985); B. LEAMING, ORSON WELLES: A BIOGRAPHY 420-25 (1985).

54. See, e.g., L. COCKBURN, OUT OF CONTROL (1987); N. CHOMSKY, THE CULTURE OF TERRORISM (1988).

identification.⁵⁵ "Who are you?" asks Kristofferson, as it gradually dawns on him that he is not speaking with your basic, dollar-a-dozen narcotics officer. "I'm a fixer," says Smith, smiling obliquely, "I fix things." In *True Believer*, he's fixing a drug bust in New York to make it look like the government is actually combatting (rather than managing) the cocaine economy—fixing a frame for Shu Kai Kim when things (similar to the arms for hostages trade in the Reagan Administration) do not go exactly according to schedule. At all costs, the D. A. believes, you have to make certain that you cover your tracks.⁵⁶

The only eye-witness in *True Believer* who claims that Shu Kai Kim is innocent is a hapless fellow confined to a mental institution who also thinks that John F. Kennedy was assassinated on orders from the telephone company. By the end of *True Believer*, everyone in the film is wondering what the phone company could possibly have had against Kennedy! And that is exactly what Kurtwood Smith has to fix in *Flashpoint*: an unravelling cover story about who was responsible for the events in Dallas in late 1963. Some viewers or critics may regard films about the criminal justice system in which the prosecution emerges as a deceitful and potentially draconian force or, more generally, "conspiracy films" (e.g., *The Manchurian Candidate*, *Seven Days in May*, *All the President's Men*, *The Formula*, *The Border*, *Suspect*), including three which feature Hal Holbrook in Kurtwood Smith's "fixer" role (*Magnum Force*, *Capricorn One*, *The Star Chamber*), as further regrettable evidence of "the paranoid style of American politics."⁵⁷ "Clandestinitism," responds Carl Oglesby, is not the figment of paranoid imagination, exploited by Hollywood as with any other form of popular craze or madness, but rather "is a disease of republican twilight. Its coming bespeaks the degeneration of the constitutional republic into the military empire."⁵⁸ Even former speechwriter for President Lyndon Johnson and now public television commentator, Bill Moyers, observed in a nationally televised documentary on the origins of the Iran-Contra affair:

55. See, e.g., N. CHOMSKY, *ON POWER AND IDEOLOGY: THE MANAGUA LECTURES* (1987).

56. This admonition is not lost on officials even at the highest levels of government; see, e.g., Stille, *The Other Iranian Arms Case*, NAT'L L.J., March 13, 1989, at 1.

57. See R. HOFSTADTER, *THE PARANOID STYLE IN AMERICAN POLITICS AND OTHER ESSAYS* (1965); M. ROGIN, *RONALD REAGAN THE MOVIE & OTHER EPISODES IN POLITICAL DEMONOLOGY* (1987).

58. C. OGLESBY, *THE YANKEE AND COWBOY WAR: CONSPIRACIES FROM DALLAS TO WATERGATE 43-44* (1976).

It isn't the first time that men who express reverence for democracy in public have violated the values of democracy in practice. The secret government is an interlocking network of official functionaries, spies, mercenaries, ex-generals, profiteers and superpatriots, who for a variety of motives operate outside the legitimate institutions of government. Presidents have turned to them when they can't win the support of the Congress or the people, creating that unsupervised power so feared by the framers of our Constitution. Just imagine that William Casey's dream came true. Suppose the Enterprise grew into a supersecret, self-financing, self-perpetuating organization. Suppose they decided on their own to assassinate Gorbachev, or the leader of white South Africa. Could a president control them? And what if he became the Enterprise's Public Enemy Number One? Who would know? Who would say no?⁵⁹

Oglesby subtitles his book on America's addiction to covert politics, "Conspiracies From Dallas To Watergate."⁶⁰ Errol Morris's documentary, *The Thin Blue Line*, with which we will conclude this selective overview of recent films about American criminal justice, could have been subtitled, "From Watergate To Dallas."

VII

About the same time that the initially convicted Watergate conspirators were being released from prison and were wondering, perhaps, how long they might have to wait before applying for readmission to the Bar, twenty-eight year old Randall Dale Adams made his own fateful trip to Dallas, Texas. After the opening credit sequence, *The Thin Blue Line* continues this way: Shot 1 (darkness); Shot 2 (tower with a lighted ball silhouetted against deep-blue, night sky/Philip Glass music begins); Shot 3 (post-modern skyline of Dallas at night with small flashing light); Shot 4 (skyscraper closer up, flashing orange light brighter); Shot 5 (again, Dallas urban architecture at night, now more horizontal emphasis on cars moving but no people); Shot 6 (Randall Adams in a white shirt, open collar, against indoor wire fence like a locker room): "In October, my brother and I left Ohio. We were driving to California. We got into Dallas on a Thursday night. . ."; Shot 7

59. Moyers: *The Secret Government . . . The Constitution in Crisis* (A. H. Perlmutter, Inc. & Public Affairs Television, Inc., Nov. 4, 1987).

(first use in film of full-screen, revolving red police light, pulsating in the dark).

Shot 8 (David Harris in an orange-red prison jumpsuit against a kind of tile background): “[T]his all started, David’s running away from home. He takes . . . I took a pistol of my dad’s and a shotgun. Took a neighbor’s car. . .” While Harris speaks, we see: Shot 9 (the pistol, immaculate, silver with a pearl handle, against a white background, floating forward in space); Shot 10 (back to Harris): “. . . ended up com’in to Dallas.”; Shot 11 (post-modern skyscraper with top like an Egyptian pyramid); Shot 12 (architectural structure covered with tiny lights blinking on and off like a spaceship just landed); Shot 13 (close-up of pyramid from shot 11); Shot 14 (back to Randall Adams): “I went to work and no one showed up . . . On the way home I ran out of gas . . . A person at that time pulled over . . . He stopped and asked me if I needed any help.”; Shot 15 (travelling aerial shot of Dallas showing many square miles of development): “I’m drivin’ down some street,” says Harris (voice over), “somewhere in Dallas. . .”; Shot 16 (roadmap of Texas/Dallas Vicinity): “I’d just turned sixteen,” continues Harris (voice over); Shot 17 (closer up, same roadmap): “and there was a guy over there. I think he run out’a gas. . .”; Shot 18 (still closer, Dallas is now large on the map); “This,” concludes Harris (voice over); Shot 19 (highways around Dallas in full view on roadmap): “was Randall Adams.”; Shot 20 (yellow sign reading “Comfort Motel” in front of huge highway billboard/next “movement” of the film begins).

It is impossible to adequately convey through this partial summary the intensity achieved by the combination of separate monologues, Philip Glass score, and juxtaposition of images in Errol Morris’ composition of *The Thin Blue Line*. Perhaps this illustration provides, however, an indication of Morris’ filmmaking style. Suffice it to say that this approach to directing film draws upon multiple artistic resources which would include Godard in motion pictures,⁶¹ Francis Ponge in poetry,⁶² Robbe-Grillet in fiction,⁶³ pop art and photo-realism in paint-

61. See, e.g., GODARD ON GODARD (J. Narboni & T. Milne, eds. 1972); A. GUZZETTI, *Two or Three Things I Know About Her: Analysis of a Film by Godard* (1981).

62. See, e.g., THINGS: SELECTED WRITINGS OF FRANCIS PONGE (C. Corman trans. 1986).

63. See, e.g., A. ROBBE-GRILLET, *THE ERASERS* (R. Howard, trans. 1964); A. ROBBE-GRILLET, *FOR A NEW NOVEL: ESSAYS ON FICTION* (R. Howard trans. 1966).

ing;⁶⁴ and from a number of recent films, all of which are interesting in their own right: *Blood Simple* and *Blue Velvet* (affectless speech and, as Rosellini described it late in his career, having the courage to go slow),⁶⁵ *Repo Man* and *Paris, Texas* (for the feel of the southwest and the roadmaps to nowhere),⁶⁶ Jim McBride's *Breathless* (the drive-in and the omnipresence of mass culture), and *Liquid Sky* (the use of contemporary music as well as silence, and the futuristic emptiness of cities without people). Equivalentents of the close-up shots in *The Thin Blue Line* of a psychiatrist's handwritten symbols and a police stenographer's notes initially appeared in films like Godard's *Le Mepris* (1963) and *Pierrot Le Fou* (1965), and in many respects, Randall Adams' experience of Dallas is equal to that of Godard's Lemmy Caution in *Alphaville* (1965). Richard Roud's analysis of timelessness in Godard can readily be used to better comprehend what Errol Morris is doing within the documentary aesthetic:

Of course, one of the essential characteristics of the filmed image is its eternal presence: as Robbe-Grillet said, in the cinema the verbs are always in the present tense. And yet, some paintings have also captured the eternal present. One thinks first of all of Vermeer, who was also, in a sense, a painter of reality, one whose subjects were drawn from the banality of everyday life. But often the beauty in both Vermeer and Godard comes from gestures or movement. The shot in almost every Godard film of a girl agitating her hair is not so different from Vermeer's capturing for all time a girl trying out a necklace in front of a mirror, or a servant pouring out milk into a jug: the necklace poised in mid-air, the milk caught passing from pitcher to bowl. . . . Time is made to stop, the eternal flux is seized at an ideal moment and retained. Furthermore, Vermeer glories in ordinary subjects, ordinary objects. For both Godard and Vermeer, a window, a chair, can be—are made to be—seen as objects of extreme beauty.⁶⁷

A police officer is murdered in Dallas and, partly on the strength of David Harris' testimony against him, Randall Adams is convicted of capital homicide. What Morris does with this story is show the incredi-

64. See, e.g., S. STICH, *MADE IN USA: AN AMERICANIZATION IN MODERN ART, THE '50s & '60s* (1987).

65. See P. BRUNETTE, *ROBERTO ROSSELLINI* (1987).

66. See *PARIS, TEXAS* (C. Sievernich ed. 1984).

67. R. ROUD, *JEAN-LUC GODARD* 81 (1970).

ble ordinariness with which Adams is chosen for prosecution,⁶⁸ the way everyday objects themselves conspire against him, the almost casual disinterest of everyone but Adams' lawyers in whether he actually killed anyone, and (like "the milk caught passing from pitcher to bowl")⁶⁹ the chocolate Burger King shake frozen in slow motion as it flies across the night and drains out into the roadside. The latter image reveals everything that is wrong with the prosecution's manufactured story of what happened and yet, at the same time captures a majestic and unalterable moment in the "eternal flux" which is moving ineluctably toward its destination: putting Randall Adams to death. This sense of timelessness—a kind of dream state, outside of normal sensory experience—perfectly characterizes the feeling these events engender in both Randall Adams and David Harris. "You get numb," says Adams, "you get . . . it's like a bad dream. You want to wake up but you can't do it. Fifteen times, twenty times a day, I hear this same story about what happens when a man's electrocuted." "I don't know why but it's always seemed like time just stopped, you know," recalls Harris, describing for Morris' camera the moment when the police officer was shot, "I mean it didn't seem like any time passed, you know . . . just seemed like it (Boom!), time stopped or something. I don't know what it is . . . like a flash." "I've often thought to myself," remarked Errol Morris in a taped interview shown on the March 21, 1989, ABC network broadcast of *Nightline*, "what is this story about? It is a story about a terrible miscarriage of justice. But it is a story about how easy it is to slip between the cracks, how easy it is just to disappear and never to be seen or heard from again. Randall Adams is a person who became trapped in a real life *Twilight Zone* episode."

An attorney in *The Thin Blue Line* states that Adams' trial judge had occasion to ask why anyone was concerned about the defendant in the first place since "he's just a drifter." The man who fell between the cracks nearly disappeared permanently, coming within three days of execution in a Texas death house prior to having his sentence reduced to life. Then in March of 1989, on the same day when Teri Garr and

68. Both Adams' defense attorney Edith James (interviewed in *THE THIN BLUE LINE*) and filmmaker Errol Morris (interviewed on the ABC News program, *Nightline* (March 21, 1989)) suggest that the Dallas County prosecutor may have sought to convict Randall Adams of a murder he did not commit primarily because he was old enough to be eligible for the death penalty in Texas, whereas the likely killer, David Harris, was only sixteen years old at the time of the crime and thus too young to be a candidate for execution.

69. ROUD, *supra* note 67.

David Letterman had a discussion on the popular Letterman, late-night talk show about whether *The Thin Blue Line* was a "documentary or a movie," the Associated Press put this report on the wire service:

The man whose guilt was questioned in the documentary movie, *The Thin Blue Line*, had his conviction overturned on Wednesday, giving him hope of freedom after more than 12 years in prison . . . Adams' case attracted attention last year with the release of Errol Morris' documentary, *The Thin Blue Line*. It suggests that David Harris, the prosecution's chief witness in the 1977 trial, committed the crime . . . The appellate judges said prosecutor Doug Mulder suppressed evidence and knowingly allowed perjured testimony during Adams' 1977 trial. The court said the state knowingly suppressed evidence that witness Emily Miller had failed to identify Adams in a police lineup; that a police officer advised her she did not identify Adams, and that the officer told her the person she should have identified.⁷⁰

The Texas Court of Criminal Appeals decision to set aside Randall Adams' conviction is lengthy, represents a systematic elaboration of the significance of the fourteenth amendment for criminal courts in the state of Texas, and at times manifests a barely concealed contempt for the kind of "process" which Randall Adams received from the prosecutor's office in Dallas County.⁷¹

VIII

In *Shakedown*, the government tolerates corrupt police officers who even, in an extreme case, attempt to eliminate a defense attorney who is on to their game. In *True Believer*, the state (again) becomes tainted by its close relation to the narcotics business⁷² and goes so far as to frame an innocent man to cover up a crime committed by one of its own. In *The Thin Blue Line*, the government (in its everyday guise: that of prosecutors and police) also crosses the line. Had the Dallas County prosecutors, or the trial judge himself, ever read the Supreme Court's famous *Olmstead* dissent? "If the Government becomes a law-

70. Associated Press, *Court Overturns "Thin Blue Line" Conviction*, FORT LAUDERDALE NEWS, Mar. 2, 1989, at 3A.

71. See, Gershman, *The Thin Blue Line: Art or Trial in the Fact-Finding Process*, 9 PACE L. REV. 275 (1989).

72. Cf., Salholz, Miller, Waller & Kaplan, *No Sympathy for the Devil*, NEWSWEEK, Jan. 1, 1990, at 19.

breaker," argued Brandeis, "it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution."⁷³

Based on his comments in *The Thin Blue Line* and a subsequent statement made in an official proceeding in Texas during December, 1988, it would appear that David Harris became, indeed, a "law unto himself." But many other questions remain open. In spite of Brandeis' stirring words, the sentiment he expressed clearly in *Olmstead*, what possible "retribution"—what sanction—would be enforced against Dallas County? What damages would be paid if prosecutors are immune from civil liability? Would the Texas Bar Association investigate the professional ethics of attorneys with many criminal convictions notched on their belts—legendary crime fighters?

In spite of "the thin blue line" of law enforcement which precipitated, rather than prevented, anarchy, a documentary film managed to play a critical role, at least in this one instance, in the release of an innocent man from prison.⁷⁴ At the same time, it provides the widescreen projection of a searing image and the mass communication of an unforgettable story of what happens when legal rules become little more than Kabuki screens, strategically placed across a stage whose drama has a conclusion inscribed from the first act. In *The Thin Blue Line*, Errol Morris managed to put this human condition, the very definition of our dystopian politics, right there "in the *mise en scene* itself."⁷⁵ The result is a convergence of avant-garde and kitsch which even the youthful Clement Greenberg might have found reason to defend.

73. *Olmstead v. United States*, 277 U.S. 438, 485 (1927) (Brandeis, J., dissenting).

74. See Fricker, *Crime and Punishment in Dallas*, ABA J., July 1989, at 52.

75. See comment by Jean-Luc Godard, quoted in ROUD, *supra* note 67, at 129:

It may be true that one has to choose between ethics and aesthetics, but it is no less true that whichever one chooses, one will always find the other at the end of the road. For the very definition of the human condition should be in the *mise en scene* itself.