

# **Television and the Legal System**

**Barbara Villez**

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# Foreword

*Antoine Garapon*

*Antoine Garapon is a French judge and director of an international research institute on judicial studies, L'Institut des Hautes Etudes sur la Justice. This foreword presents a French reading of the book.*

For a French judge, this book offers three lessons in one: through an analysis of American television series about the law, it not only introduces us to a foreign judicial universe, but also reveals a new way of discussing television. (Barbara Villez writes in French but thinks like an American.) Through fictional imagery, she tells us the story of a culture, which is as popular as it is judicial and highbrow. Television series thus become the cultural gate through which we discover a television civilization as well as a legal universe and an intellectual environment.

The challenge is to maintain the coherence of these three realms in order to enter into “a legal culture.” Never has this expression been more justified since images and imagery are key to authority and power, and this is true of all societies. Authority and power, about which so much is said these days, are intimately linked to representations—both literal and figurative—which create meaning. The serious questions which arise, concerning often insignificant subjects, are perhaps among the most profound and troubling to challenge our democracies: does television risk undermining the authority of democratic institutions; are television images the enemy of national symbols, as many think; does commercial logic, to which those images respond, subvert the requirements of justice?

In examining these questions, Barbara Villez also addresses another anxiety, which is specifically French: the fear of cultural assimilation or, more precisely, the Americanization of the minds of French youth, who spend so much time in front of the television. Here, American TV series seem to have two declared enemies: on the one hand, French republican institutions, notably the French system of justice, which threatens to dissolve in TV images, and on the other hand, the very cultural identity of our country. This book deals seriously with those troubling issues without letting itself be blocked either by technophobia or anti-Americanism, unfortunately so prevalent in our country.

Let us begin our trip into American television culture in the company of Perry Mason, hero of a successful series at the end of the 1950s, who joined the popular American cultural pantheon of legal redeemers battling all the evils of America—veritable angels of democracy. Mason thus joins such

mythical representations of lawyers as Abraham Lincoln in John Ford's *Young Mister Lincoln*, Atticus Finch in *To Kill a Mockingbird* and, more recently, Patrick McGuinness in *Murder on a Sunday Morning*. They present the same selflessness, the same stubbornness, the same defiance toward corrupt compatriots, but maintain an unshakable faith in American justice. They all practice their craft as though it were a spiritual vocation. Every culture must maintain the image of the incorruptible agent in whom one may believe so as not to despair of the system of justice. In France, it is the examining magistrate (*juge d'instruction*), in America the lawyer.

In each episode of *Perry Mason*, a foundation scene sets up the story in which the solitary white knight “saves the innocent threatened by the villains,” who in the series is incarnated by Hamilton Burger, a man determined to obtain a guilty verdict, and Lieutenant Tragg, “who could believe even his own mother capable of committing a crime.” In this early epoch of American legal series, television stuck to institutional legal authority within the very limits of theatrical direction: the judge and jurors always occupied the same places and a “happy end” assured that justice would triumph. Authority was guaranteed by the stability of the set and the actors as well as by the repetitive narrative scheme, just as it is in the traditional judicial ritual. Television became an ally, defending the sacredness of the judicial institutions, and the viewers left the program reassured by the lawyer, about whose private life they knew nothing, so impermeable was the barrier between the private and the public. The TV screen extended the space of the institution.

This reassuring cliché, which served the myth of justice, would later be shoved aside by a new approach to the legal system. In hopes of keeping its audience—respect for the laws of the marketplace—American television began elaborating more subtle screenplays. More and more series involved audiences in the periphery of the American legal institution, in what happens “backstage” and in the minds of the protagonists. The storyline permitted viewers to encounter more complex characters consumed by ambition, torn by conflicts of loyalty, troubled by contradictory emotions—in short, people resembling us, for better or worse. The original type of legal hero was replaced by fallible characters like Bobby Esposito, the corrupt prosecutor who finds salvation in devoting himself to the underprivileged. “From fallen angel, this lawyer becomes one of the chosen because he gets closer to the people, in a culture, which is above all democratic.”

The investigation of the lawyer's fallibility by the new generation of American television series paradoxically had no effect on the purity of the legal institution per se, quite the contrary. The new point of view was not invasive but rather integrated into a television discourse on justice and democracy. Individual weakness was not necessarily a threat to the institution itself, which emerged victorious, less idealized but more human, and thereby reinforced. Since all men are fallible, all the more reason that judicial procedure should protect itself from their fits and passions. This is

seen as the great virtue of the American trial. Justice is viewed not as an institution of the State, but as a “supra-institution,” if the reader will allow me the expression, and to the French mind such a status is more political than judicial.

It is perhaps for that reason that, in contrast to the American television series, Barbara Villez judges French series as stereotyped: the prosecutor is sarcastic and excessive, his character often even overplayed. Lawyers distinguish themselves by their oratorical prowess—“good talkers.” Witnesses are easily intimidated and dishonest. The legal machine is viewed through the camera as classic, strong and stable, in short, impressive. “Narcissistic rivalry between lawyers, problems between men and women, attraction between persons of the same sex, or different, the importance of one’s private life, professional hierarchy, are among the preoccupations which underlie French plots when they are not themselves the major story.” The contrast is striking with American series where private life is not parallel to the law but entangled in it, creating ethical conflicts and judicial controversies.

In this way the new American television series guide their viewers beyond the courtroom and into the lawyer’s office or the judge’s chambers, which become centers of gravity in the narrative. The director’s objective is not to emphasize the artificiality of the courtroom setting but rather to highlight the “judicialization” of social life in the USA—the infiltration of law into everyday life. The objective is to educate viewers to develop a more panoramic and critical view of the justice system. Thus, Barbara Villez points to the specificity of the television viewpoint, which allows the audience to contemplate an infinitely larger domain of judicial life than attending a courtroom trial would allow. Whereas the public at a real trial is limited to a single scene or legal environment, the television audience can enter the jury room as Sidney Lumet arranged in his masterpiece, *Twelve Angry Men*, or eavesdrop on privileged client-lawyer conversations, etc. For that reason, the paradigm of television viewing is closer to reading a novel than to watching a play. It is “the text, literary or television,” Barbara Villez reminds us, that “trains its reader,” and one will not be surprised to encounter the metaphor of the *novel* when reading Ronald Dworkin and so many others in their works about American justice.

Thanks to television, the authority of the American legal system emerges transformed by this visual emancipation. American justice does not lose its authority even though stripped of its symbolic attributes traditionally linked to one setting and one period of time. Judicial authority no longer emanates from its majestic and symbolic affirmation in the courtroom, but also from its ability to resolve conflicts, to promote loyal debate and to exist as an integral part of American social life. Representing, filming, the judicial system in this way contributes to a major mutation at the end of which legal authority becomes more invisible, more part of a discussion than a series of assertions. One perceives justice more as something

familiar, transformed by the law, rather than as a sacred ritual closed to life. The legal system thus enjoys its own “new wave” twenty years after the cinema: the realism of law becomes the new seat of its authority.<sup>1</sup>

This process of deinstitutionalization and abstraction of authority has modified the actual judicial setting as well. Not only has the American judicial space upturned itself to make room for cameras in the courtroom, but it has also become more open to society and more receptive to the stories of the plaintiffs and defendants it houses. It has progressed to the point that the decor of our French courthouses—for this evolution is also perceptible in France—has been simplified so as to let us explain our lives, our intertwined tales and our publicly displayed sentiments and resentments. Plaintiffs and defendants have become the mobile symbols of this new public space.

One is struck by the role of the narrative in American televised series, not as a means of recounting one’s own life story but as a way of giving shape to community. The legal stories are by definition open: they invite everyone to reflect on them. French legal narratives are more intentionally closed: like the country’s Civil Code, which traditionally seeks to provide all possible solutions. This is largely a myth, and the entire legal profession knows it. Numerous interpretations and ethical dilemmas exist, but French television writers still resist taking them up to create lifelike scenarios.

The raw material for television drama is the spectacle of the trial itself. However, the two legal systems do not emerge equally well from the challenge: the American system, being procedural and narrative, facilitates this circulation between life and the courtroom. The French judicial system, with its seemingly rigid forms, weighs television down and appears to hold second place to politics.

In a French trial, everyone plays a role. This effect is made possible by scenic changes, which, the reader might say, exist in the United States as well. However, they do not have the same significance. First of all, in the American system, there is no *instruction*.<sup>2</sup> The essential energy of a common-law trial is mostly devoted to establishing facts, whereas in France this will have already been done, in principal by the *juge d’instruction*. He or she is responsible for gathering as much evidence as possible, in favor of as well as against a suspect. The judge can dismiss the possibility of a trial for want of sufficient incriminating proof. Put another way, if the *juge d’instruction* does not write the script of the play, he or she certainly sketches the intrigue. The trial dramatizes the procedure already elaborated in the judicial report. Dramatic interest of courtroom activity does not reside in determining guilt or innocence, but in understanding the individual tragedy. One indication of this is the substantial time spent in a French trial discussing the personality of the accused. There is no real equivalent of this in an American trial.

A trial is also played out in the United States, but in the sense of a game, a sport rather than a theater play. The scenic changes in the French trial

do not determine a space for action, but rather the face-to-face confrontation between a man and institutional authority—a spectacle that can turn toward the tragic or the comic. French justice can just as easily incite laughter as tears, but it makes little difference in the end; one's attitude always comes down to the contrast between oneself and the others, what could happen to “me” and what happens to others. Whether one is saddened by the tragedy of the human condition or amused by the pitiful denials of the accused, everything in a French trial resembles theater rather than a novel.

The authority of a novel is not the same as that of a play. Theater is the product of a *mise en scène*, a novel is the product of the act of writing. The problem of a novel is one of narrative coherence; it has to create a story from bits and pieces of life and overcome the contradictions, with arguments which let the text triumph, in this case the US Constitution. A novel is read, a theater play is watched.

In France, legitimacy proceeds from the separation between the law and its application; in the United States, authority is based on the perpetual questioning, through discussion, of stock responses. The United States constantly rejects finite limits; the French system, on the contrary, is founded on them. Americans consider the inclusion of dissenting opinions as necessary to establish the authority of law and justice. They distrust unanimous decisions, suspecting collusion. Another illustration of this idea can be found in the search for transparency: one must know everything about the process in order to be reassured. The French think quite the opposite: justice is rendered in the name of an anonymous entity—the court, the tribunal—deliberations must not be divulged. Revealing the dissension among men risks weakening the authority of the institution, at least that is what the French fear. For the French, authority stems from unanimity, which is the unity of truth (a profoundly recurring theme in relation to science, to the status of the expert, to the image of the technocrat—all of which flow from the same conception). Power is not the sum of the opinions of those who serve it.

Authority does not have the same consistency in the two cultures. In one, authority is invisible. It certainly does not reside in the State (*l'Etat*), nor in the hands of the judge. It resides rather in legal discussion, in the jury and in the Constitution. Authority is inseparable from freedom of speech (the First Amendment to the US Constitution), from discussion (judicial procedure) and from the ultimate arbitration (the Supreme Court).

In France, authority is incarnate in the State, in the Republic, which is constantly in search of material and ceremonial content. In court, words are used to seduce more than to argue, to affirm more than to deliberate. French culture vigorously encourages passivity and duplicity while American culture ignites activity, involvement in the game. France seems marked by a separation between what is noble and what is vulgar, which places television series among the minor arts—a popular, even vulgar, genre.

In this way, it becomes possible to connect dramatic conflict, the divide between law and life, and the remoteness of power: all this seems to denote

a sort of initial fold, in which all the images find their cultural coherence. In the television series discussed here, two symbolic constructions offer themselves to our interpretation: whereas the French Republic retains a strong, religious imprint, American culture, on the contrary, has invested in a continuous lesson of living together under the auspices of a founding text and through the mediation of judicial procedure and law. In French culture, television amuses or denounces; in the United States, it can become an opportunity for sharing if it is perceived as an instrument of democratic pedagogy, which is not yet the case in France, where not even the television industry believes in itself.

As a French reader, I put this book down reassured as to the possible democratic benefits of television. This journey into American culture closes on a triple exhortation: television citizens must be more demanding about what television shows them, jurists must pay more attention to the representation of trial procedure, and intellectuals must take television seriously. Therein lies the interest of these pages.

# Series Editors' Preface

The synthesis of the media and the legal system is of increasing importance to both those working within academia and the general public. At an International Institute of Sociology of Law Workshop, held in Oñati, Spain, in 2002, a number of us working in the broad field of law and popular culture observed that what actually underpinned much of our work was the assumption that popular culture was significant in some way in determining how legal culture operated—this was effectively a response to the “so what?” question that often afflicts work in legal theory.<sup>1</sup>

After Oñati, a modest piece of empirical research that examined the significance of media for first-year law students across a number of jurisdictions was undertaken, and the results published in 2005.<sup>2</sup> This confirmed the suggestions of the earlier writers as to the significant role of the media and popular culture in shaping perceptions of law, justice and lawyers. Television has an important part to play in this process, and potentially more significant than the feature film that has been the focus of much of our own research in the past.<sup>3</sup> The stories of law constructed in popular culture fill the void left by “official” commentaries that are largely absent from the media especially in the UK. The televising of trials is a controversial concept and the entertainment dimension may outweigh the educative factor. A most fascinating recent example of the courtroom in action is a French film by Raymond Depardon, *10e chambre—Instants d'audience*, that provides a fascinating insight into the workings of a French court. Unlike the excitement of the televised version the events are humdrum and mundane.

We know Barbara Vilez well from our collaboration on the European Images of Justice project, and are very pleased to see more work that challenges US hegemony, and delighted that it appears in our book series *Studies in Law Society and Popular Culture*. It is also important that we encourage scholarship that examines all aspects of the relationship and we are delighted to see the text appear in English. At the same time that we see more academic interventions in the area, we ought to stress that there is also some important more populist work being conducted within the US to analyze and understand the role of television lawyers. The work of Michael

Asimow, in particular, is notable here and especially his collection for the American Bar Association.<sup>4</sup>

We must also thank Antoine Garapon for his thoughtful remarks in the foreword. The French have long been standard-bearers both in terms of their attitudes towards the media and film, and their approaches to judicial training. We were honored to be involved some years ago in a weeklong Law and Film Studies course, provided as part of the French judicial training program by the Institut des Hautes Études sur la Justice (Institute of Advanced Studies on Justice) in partnership with the École Nationale de la Magistrature (National School of Judicature). It was entitled *L'Image de la Justice dans le Cinéma Européen* (*The Image of Justice in European Cinema*) and analyzed how lawyers and legal systems have been presented in the cinema of France, Germany, Italy, and the United Kingdom. This groundbreaking contextual approach to professional training is an excellent illustration of the synthesis between the theory and practice of law. This book further exemplifies this link, and is a worthy and important addition to the law and popular culture canon.

Guy Osborn and Steve Greenfield,  
London, March 2009

# Author's Preface

This book actually began with an artichoke because it takes time, and patience, to eat one. My mother, a French-speaking Belgian living in New York, used to set me up in front of the television so I would be distracted while eating my artichoke at lunchtime. I was quite young when I became familiar with daytime television shows: soap operas, children's programs and the sitcoms of the 1950s and 1960s, variety shows, Westerns and legal series. Television is part of my personal history, as it is for many Americans. I have seen a good number of "cult" shows, I know the codes, and I catch the jokes. I used to do my homework in front of the television. I remained glued to the set, like everyone in the country, during JFK's funeral and when Jack Ruby killed Lee Harvey Oswald before my very eyes. New York was the capital of the television industry at that time and I was often invited, alone or with my classmates, to the studios by children of producers in my class. I know American television; I have a television viewer's memory and culture.

Being brought up in a bilingual family, it was my goal to come to France after my undergraduate studies. Thus, I came for a year in 1970 and never left. At the time, French television had all of three channels, but since it keeps good company and serves as an excellent tool of enculturation, I watched all I could. Later, when I vacationed in the United States with my children, I managed to keep up on American series thanks to summer repeats. I was therefore able to follow the evolution of the legal series, my favorite genre. The number of channels in France grew slowly at first until there were six, but with the arrival of cable, the number of stations exploded and internationalized French television. Many imported series found their way into French living rooms and naturally the American legal series among them.

France is where I finished my studies and raised my children. I know the French school system and today I teach Anglo-American case law to students of the law department, and didactics in the English department of University Paris 8. I started incorporating some of the legal series in my courses, but my colleagues at the university were quite skeptical at first over my enthusiasm for these programs. The idea for this book came to me when

I saw how much the students liked the work we were doing with the series. Often in fact they already knew the programs I showed them. The project really took form after two international conferences in France. The first, on the image of the trial, took place at University Paris X Nanterre, organized by Christian Biet and Laurence Schifano. The second, a few years later, on the image of justice in European cinema, organized by the Institute of Advanced Judicial Studies<sup>1</sup> and the School of Judicial Training.<sup>2</sup> The results of this reflection are now in the following pages and I hope they will open a debate on how citizens acquire a legal culture, how television trains viewers, and how television serves as an efficient pedagogical instrument.

There is not enough room here for me to thank all the people who encouraged me in this endeavor. Nevertheless, I would like to express my gratitude to Ann Thomson for her ever-wise criticisms. Sincere thanks also go to Antonin Rabecq, Charlène Goasguen, Harold Epineuse et Madeleine Chami, all of the Institute of Advanced Judicial Studies in Paris, to Allen Rozelle and Emilie for their precious practical help and equally precious emotional support. I would especially like to thank Judge Antoine Garapon for having honored me by agreeing to write the forward.

My purpose here is to call attention to the role television has played in offering American citizens pertinent information on their legal system. The importation of American legal series by European television stations has caused confusion in the minds of foreign viewers. In France, this is particularly true since there are few quality legal fictions to enlighten the public as to their own particular Roman tradition system. It is my hope that the potential of television as a source of legal culture will be recognized and used to its greatest extent intelligently and everywhere.

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# Introduction

The function of the writer is to make it impossible for anyone to ignore the world and consider himself innocent.

Jean-Paul Sartre, *Qu'est-ce que la littérature?*

It has become frequent that the French, when finding themselves in court, address their judges as *Votre Honneur*.<sup>1</sup> This new cultural habit has of course annoyed judges, but more important, as a judicial and cultural error, it is emblematic of a less innocent confusion between the American and French legal systems. Given the plethora of American courtroom fictions, either in cinema or on television, it is hardly surprising that the French have begun to acquire an American legal culture. The availability and practicality of television have contributed significantly to this acquisition. Television requires little effort from viewers in terms of expense or transportation. They can thus enjoy courtroom dramas in the comfort of their homes. However, the huge place reserved to imported television productions is not the only cause for this confusion. Many French law fictions reproduce American courtroom settings: the place of the parties, a single judge, a jury box.<sup>2</sup> Is it possible that production companies fail to realize that these are errors, or do they plant them knowingly in courtroom scenes, thinking that French audiences will feel more comfortable if they recognize expected (American) signs in order to follow a (French) drama?

American citizens know their rights and how their judicial system works although there has never been an obligatory program on the subject included in school curricula, contrary to France. It is likely that a vast majority of the population in the United States has acquired this information simply from watching courtroom dramas, perhaps religiously and for some, from a very young age. If the French television channels buy American law series and French viewers watch, when programming is reasonable,<sup>3</sup> then it should be no surprise that people in France have acquired criteria on the American legal system rather than on their own. Watching the American law series produced since the 1990s, which provide a complex image of law and justice, the French have become aware of questions which are not foreign to their own society, one that has become just as judicialized and complex. Thus, it is perhaps not only the quality of these programs which lure the French viewer, but also the questions dealt with and which echo those of all modern societies.

## 2 *Television and the Legal System*

The citizen's legal culture, of course less complete, less technical and untied to practice as is the legal culture of professionals of the law, is nevertheless more than a set of facts or legal terms. A legal culture is inseparable from a national mentality and acts on the models citizens have of behavior in society. It is based on an awareness of the place and role of the law in one's life. It is founded on mental images and notions which establish a vision of authority and an awareness of individual rights. With a legal culture, citizens acquire criteria allowing them to evaluate acts, decisions and even the well-foundedness of laws. A legal culture is thus indispensable for responsible citizenship.

Television programs, offering citizens notions about law and knowledge of how their legal system works, constitute a very accessible source of information and participate in the construction of this legal culture. In 2002, more than 97 percent of French households, all categories combined, owned at least one television set.<sup>4</sup> The price of televisions makes them among the first purchases of any new household, often even before certain kitchen appliances. Watching television is something most people do at some point in the day and it is often the principal activity in the evening. Tests by psychologists have shown that the mere act of turning the set on brings with it a sense of security and relaxation.<sup>5</sup> Television incites viewers to surrender to its accessible entertainment. Such viewer cooperation and availability enhance communication and learning, which is one of the aspects of the efficiency of this medium. People bring to television watching the same availability and openness they bring to play. The television viewer is vigilant in his surrender, his head is not empty,<sup>6</sup> he remains attentive so as to meet the challenges presented by the activity he has engaged in.

Because of their importance in popular culture and the degree of sophistication of their narratives over the years, American television series have become the object of university research in several countries.<sup>7</sup> Such work has studied the various genres of television series, and in some cases those programs which deal with justice. In France, research generally continues to accentuate cinema rather than television because of the inferior position occupied by television in the cultural hierarchy. For this reason, there are still but few French studies on this form of popular culture in comparison to what can be found elsewhere. In addition, legal series produced in France are far less numerous than other types of television programs about the law. It is thus essential to consider the effect of the growing presence of American series in the enculturation of the French public and especially to note the effect of series constituting the source of a legal culture.

The *legal genre* is a notion encompassing different types of discourse. The expression has been used more for cinema. For some, the genre comprises films in which the major scenes take place in court, while for others it is sufficient for the principal character to be a lawyer, even if he is only involved in an investigation before trial. For Anthony Chase<sup>8</sup> a film belongs to the legal genre when a legal question is examined in the scenario. The

parameters of the legal genre with respect to television legal series have rarely led to any attempt at a definition.<sup>9</sup> In terms of the transmission to television audiences of a basic legal culture—and this will be our main concern—we will deal only with the series in which the central figure is a lawyer, a prosecutor or a judge, and where the audience can see them exercise their principal responsibilities: in the firm, in court, pleading, advising, negotiating, managing justice. American series which follow a lawyer involved in some sort of investigation without this leading to court activity, or French series concentrating only on the activities of an examining magistrate, will not be selected for our corpus for reasons which will be explained in more detail later. Television legal series are set in the legal world; they stage life and professional activities of the personnel implicated in the administration of justice and deal with issues directly related to law and justice. The regularity of these broadcasts is another essential element, because it makes familiarization possible with aspects of judicial ritual leading to the citizen's acquisition of legal criteria.<sup>10</sup>

## LAW IN THE NARRATIVE AND NARRATIVE IN THE LAW

Entertaining, informative and pedagogical, television legal series fill the narrative needs of all viewers. They rely on the elements specific to television as well as on legal information to narrate the law. Narration is not foreign to the law. Trials permit the parties to confront their stories. Lawyers' pleading and the long judicial decisions of common-law judges are, above all, narratives. In court, it is not only important to be able to tell one's story, but the way it is told will have a determining influence on the outcome of the trial.<sup>11</sup> The increasing interest today in narrative in the law<sup>12</sup> accentuates the importance of everyone's need to tell his story. If not all narratives are fictional,<sup>13</sup> fiction nevertheless occupies an important place in the law.<sup>14</sup> Law is based on presumptions and proposes solutions which cancel previous situations; the idea is to act *as if* these situations never existed. French legal scholar, Yan Thomas, wrote that everything is at the same time true and false.<sup>15</sup> Our relation to fiction and to narrative in general serves as a basic structure and continues to figure in our ways of exploring the world, of opening our imaginations, of thinking about what has not yet been mastered or of discovering new things and experiences. Play also moulds the way we apprehend what is new and explore the world.

Watching television series is somewhat a form of play. Play encourages experimentation because it occurs in a space of security<sup>16</sup> where the player can notice the effects of his acts and decisions, but where the gap between play and reality diminishes the gravity of these effects. The absence of any real threat encourages risk-taking, which in turn facilitates learning. The role of play in learning has been the subject of studies throughout the centuries,<sup>17</sup> revealing the essential presence of a challenge, a problem to