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### Lawyers, Law & the Movies: The Hitchcock Cases

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## Book Review

### Lawyers, Law & the Movies: The Hitchcock Cases

REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES.

By Paul Bergman<sup>†</sup> & Michael Asimow.<sup>††</sup>

Kansas City: Andrews & McMeel, 1996. Pp. 338.

\$14.95 paper.

LEGAL REELISM: MOVIES AS LEGAL TEXTS. Edited by John Denver.<sup>†††</sup>

Urbana: University of Illinois Press, 1996. Pp. 314.

\$39.95 cloth; \$19.95 paper.

Reviewed by Allen K. Rostron<sup>††††</sup>

*Legal scholars have finally begun to examine how movies and other elements of popular culture depict lawyers and law. Two books, Reel Justice and Legal Reelism, approach the intersection of law and film in different ways. Reel Justice concerns movies about lawyers and law, particularly those with significant trial scenes, but dwells on whether movies accurately portray legal reality. Legal Reelism discusses how movies can be considered "legal texts" reflecting themes and problems of legal theory, but largely avoids discussion of the critical issues surrounding interpretation of these texts. This review considers the approach taken in each book by looking closely at three films about criminal trials directed by Alfred Hitchcock: The Paradine Case, I Confess, and The Wrong Man. The treatment of Hitchcock's movies by film critics and scholars over the years reveals the fundamental similarity of the questions raised by interpretation of movies and the interpretation of more conventional legal materials such as statutes. The history of Hitchcock's movies also shows that interpretive issues cannot be overlooked if movies are truly to be treated as legal texts as suggested*

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by Legal Reelism. Finally, the degree to which Hitchcock's works adhere to legal reality, the primary focus of *Reel Justice's* concern, becomes worthy of attention to the extent the realistic or unrealistic elements mark critical aspects of the films. *Reel Justice* and *Legal Reelism* should serve as powerful encouragement to further study of the relationship between law and film.

Legal scholars have recently begun to explore the relationship between law and popular culture, including movies. Two recent books, *Reel Justice: The Courtroom Goes to the Movies*<sup>1</sup> and *Legal Reelism: Movies as Legal Texts*,<sup>2</sup> approach the intersection of law and film in different ways. *Reel Justice* concerns movies about lawyers, particularly those featuring significant trial scenes. *Legal Reelism*, on the other hand, concerns movies about law. It examines how movies, whether or not they depict any lawyers, judges, trials, or other elements of the legal system, can be considered "legal texts" reflecting issues and problems of legal theory.

Neither book provides a completely satisfying excursion into the new territory of "law and film." *Reel Justice* suffers from a flaw common to lawyers' writing about movie and television depictions of legal practice. It dwells on how well movies adhere to legal reality, at the expense of the better question of whether movies portray something interesting about lawyers or law. *Legal Reelism* has a different problem. While the book persuasively demonstrates that movies can be treated as legal texts, it largely avoids discussion of the critical issues surrounding their interpretation. Issues of interpretation generally receive exhaustive attention in legal scholarship, so their absence in *Legal Reelism* is surprising. It is also disappointing, because it means that *Legal Reelism* foregoes an opportunity to consider the overlapping issues raised by interpretation of movies and conventional legal texts.

This review considers *Legal Reelism*, *Reel Justice*, and the emerging subject of law and film by examining three movies directed by Alfred Hitchcock which center on criminal trials: *The Paradine Case*,<sup>3</sup> *I Confess*,<sup>4</sup> and *The Wrong Man*.<sup>5</sup> *Reel Justice* discusses each of the three films, but focuses on how accurately they depict legal reality, a quality largely irrelevant to their merit as popular entertainment, works of art, or subjects of academic study. *Legal Reelism* suggests that the Hitchcock

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1. PAUL BERGMAN & MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996) [hereinafter *REEL JUSTICE*].

2. *LEGAL REELISM: MOVIES AS LEGAL TEXTS* (John Denvir ed., 1996) [hereinafter *LEGAL REELISM*].

3. *THE PARADINE CASE* (Selznick International 1947).

4. *I CONFESS* (Warner Bros. 1953).

5. *THE WRONG MAN* (Warner Bros. 1956).

movies, analyzed as legal texts, can potentially yield significant insights into questions and problems of legal theory. Such analysis cannot proceed, however, without resolving—explicitly or implicitly—critical issues of how to interpret the films. This review outlines the principal interpretive approaches that have been taken towards Hitchcock's films over the years. In so doing, it describes how the major methods and controversies of film interpretation are fundamentally similar to those presented by the interpretation of statutes and other familiar kinds of legal texts. The comparison suggests possibilities for interdisciplinary exchange between legal and film studies and demonstrates the need for attention to interpretive issues in each discipline.

# I

## REEL JUSTICE AND MOVIES ABOUT LAWYERS

*Reel Justice*, written by UCLA law professors Paul Bergman and Michael Asimow, is a breezy and humorous guide to litigation in the movies. It consists of short entries for sixty-nine movies that prominently feature courtroom scenes. Each entry in *Reel Justice* consists of a plot summary followed by "legal analysis," which explains the legal concepts featured in the movie, assesses the authenticity of the film's depiction of legal rules and practice, and describes the real events, if any, that inspired the film. Bergman and Asimow rank each film on a scale of one to four "gavels" based on "quality, dramatic power, and authenticity of the trial scenes."<sup>6</sup> The movies covered in *Reel Justice* range from the sober *Judgment at Nuremberg*<sup>7</sup> to the comical *My Cousin Vinny*.<sup>8</sup> The movies treated date back to Fritz Lang's *M*,<sup>9</sup> a classic 1931 psycho-thriller, although there is an overemphasis on recent films, some already forgotten just a few years after their release.<sup>10</sup>

*Reel Justice* makes a significant contribution by bringing together information on a substantial number of the movies' portrayals of legal practice over the past half century. Few figures—perhaps only cowboys, soldiers, police, and private eyes—have had a more extensive and consistent cinematic presence than lawyers. Those fields,<sup>11</sup> and many others, from journalism<sup>12</sup> to psychiatry,<sup>13</sup> have been the subject of detailed

6. REEL JUSTICE, *supra* note 1, at xviii.

7. JUDGMENT AT NUREMBERG (United Artists 1961).

8. MY COUSIN VINNY (Twentieth Century Fox 1992).

9. M (Nero 1931).

10. See, e.g., GUILTY AS SIN (Buena Vista 1993); TRIAL BY JURY (Warner Bros. 1994).

11. See, e.g., JAMES ROBERT PARISH, THE GREAT COP PICTURES (1990); RITA PARKS, THE WESTERN HERO IN FILM AND TELEVISION (1982); JON TUSKA, THE DETECTIVE IN HOLLYWOOD (1978).

12. See, e.g., HOWARD GOOD, OUTCASTS: THE IMAGE OF JOURNALISTS IN CONTEMPORARY FILM (1989).

13. See, e.g., KRIN GABBARD & GLEN O. GABBARD, PSYCHIATRY AND THE CINEMA (1987).

compilations allowing for comparison of films within and among various periods of movie history. Surprisingly, law has not been the subject of a similar compilation,<sup>14</sup> one that would invite comparison, for example, between the spate of films in the 1930s about corrupt lawyers<sup>15</sup> and the recent cycle of films based on the work of lawyers-turned-novelists like John Grisham.<sup>16</sup> *Reel Justice* represents a valuable effort to fill the void of collected information about law on screen.

*Reel Justice* is also significant as an example of one of the principal approaches to the subject of law and movies. One criterion dominates Bergman's and Asimow's analyses: the degree of realism in the movies' depiction of legal practice and procedure. The basic premise of this approach—that it is “important to know how Hollywood bends the rules to inject drama or humor into trial movies”—is never persuasively established.<sup>17</sup> Bergman and Asimow complain, for example, that the movie . . . *And Justice for All*<sup>18</sup> is “as informative about the criminal justice system as *Gilligan's Island* is about ocean navigation.”<sup>19</sup> No one watches *Gilligan's Island* for its educational content, and Bergman and Asimow do not make clear why a stricter standard of realism should apply to movies about law. Truly realistic portrayals of lawyers' work would hardly make for entertaining or interesting movies. Few, for instance, would line up to see a film titled *Adventures in Document Production* or *The Man Who Did Due Diligence*.

In its determination to identify cinematic departures from legal reality, *Reel Justice* at times becomes unusually literal-minded. The authors analyze the most absurd portrayals of legal practice as though such misrepresentations actually misled audiences. They point out, for example, that when Woody Allen's character went on trial for treason in the movie *Bananas*,<sup>20</sup> the prosecution should not have been permitted to call Miss America to testify that the defendant should be found guilty because his views differed from those of the President.<sup>21</sup> Bergman and Asimow also lapse into moralistic overstatement, claiming, for example, that it is “inconceivable” that any real judges “would condone

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14. Although not a comprehensive survey, detailed analysis of eight of the films treated in *Reel Justice* can be found in THOMAS J. HARRIS, COURTROOM'S FINEST HOUR IN AMERICAN CINEMA (1987).

15. See, e.g., CRIME WITHOUT PASSION (Paramount 1934); CRIMINAL LAWYER (RKO 1937); DISBARRED (Paramount 1938); FOR THE DEFENSE (Warner Bros. 1930); THE MOUTHPIECE (Warner Bros. 1932); STATE'S ATTORNEY (RKO 1932).

16. See, e.g., THE CHAMBER (Universal 1996); THE CLIENT (Warner Bros. 1994); THE FIRM (Paramount 1993); JOHN GRISHAM'S THE RAINMAKER (Paramount 1997); A TIME TO KILL (Warner Bros. 1995).

17. REEL JUSTICE, *supra* note 1, at xviii.

18. . . . AND JUSTICE FOR ALL (Columbia 1979).

19. REEL JUSTICE, *supra* note 1, at 113.

20. BANANAS (United Artists 1971).

21. REEL JUSTICE, *supra* note 1, at 99.

vigilante justice," like the jurists in *The Star Chamber*,<sup>22</sup> because "[t]heir training and professional moral code would prevent it."<sup>23</sup> Without a doubt, real-life lawyers and judges have engaged in ethical and professional misconduct comparable to their cinematic counterparts.<sup>24</sup> Bergman and Asimow confuse atypicality with impossibility.

Simply grading a movie for accuracy as if it were a bar exam essay is not enough. Lack of verisimilitude need not be a flaw, nor even merit mention, unless it somehow affects the popular, artistic, or intellectual merit of the material. For example, in a flurry of writing about the television series *L.A. Law* several years ago, many offered the unshocking observation that the program was not a documentary portrait of typical lawyers' days.<sup>25</sup> Others properly recognized that observation as a mere starting point for investigating the kinds of images and ideas about lawyers and law that the program presented.<sup>26</sup> The fact that *L.A. Law* rarely showed a case ending in a voluntary settlement rather than a litigated resolution, for example, reflected not only dramatic imperatives but an implicit faith in the legal system and the ultimate triumph of the better attorney.<sup>27</sup> *Reel Justice* enumerates many legal inauthenticities, but ultimately fails to explain why they matter.<sup>28</sup>

## II

### LEGAL REELISM AND MOVIES ABOUT LAW

*Legal Reelism* reflects a more traditional academic approach in its fourteen essays on the relation between films and legal theory. The

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22. *THE STAR CHAMBER* (Twentieth Century Fox 1983).

23. *REEL JUSTICE*, *supra* note 1, at 254.

24. See, e.g., PETER MEGARGEE BROWN, *RASCALS: THE SELLING OF THE LEGAL PROFESSION* (1989); ROY GRUTMAN & BILL THOMAS, *LAWYERS AND THIEVES* (1990); SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994); DAVID W. MARSTON, *MALICE AFORETHOUGHT: HOW LAWYERS USE OUR SECRET RULES TO GET RICH, GET SEX, GET EVEN . . . AND GET AWAY WITH IT* (1991).

25. See, e.g., Michael Orey, *Sex! Money! Glitz! In-House at L.A. Law*, *AM. LAW.*, Dec. 1988, at 32; Charles B. Rosenberg, *Inside L.A. Law*, *A.B.A. J.*, Nov. 1988, at 56; Abner Mikva, 'L.A. Law'—Is It Law or Is It Just L.A.?, *N.Y. TIMES*, Mar. 15, 1987, § 2, at 31; Bruce Weber, *Laws of the Land vs. the Laws of Prime Time*, *N.Y. TIMES*, May 6, 1990, § 2, at 27; cf. Charles B. Rosenberg, *An L.A. Lawyer Replies*, 98 *YALE L. J.* 1625 (1989) (suggesting *L.A. Law's* significance as vehicle for images of lawyers and law has been overstated).

26. See, e.g., Michael M. Epstein, *The Evolving Lawyer Image on Television*, 27 *TELEVISION Q.* 1 (1994); Stephen Gillers, *Taking L.A. Law More Seriously*, 98 *YALE L. J.* 1607 (1989); Rachel Kranz, *L.A. Liars*, *RIVER TO RIVER*, Oct. 15, 1987, at 18; David S. Machlowitz, *Lawyers on TV*, *A.B.A. J.*, Nov. 1988, at 52; David S. Meyer & William Hoynes, *Shannon's Deal: Competing Images of the Legal System on Primetime Television*, 27 *J. POPULAR CULTURE* 31 (1994); Kathleen Karlyn Rowe, *Power in Prime Time*, *JUMP CUT*, Feb. 1988, at 20-27.

27. See Meyer & Hoynes, *supra* note 26, at 36.

28. In one exception, Bergman and Asimow rightly criticize Hollywood's damaging, stereotypical depiction of women lawyers, but say only that filmmakers should "get a life" and "[s]top picking on female attorneys." *REEL JUSTICE*, *supra* note 1, at 93.

collection's editor, University of San Francisco law professor John Denvir, identifies the essays' common premise as the notion that movies are "legal texts," meaning texts that "tell us something, different things, about the 'rule of law.'"<sup>29</sup> About half of the contributors to *Legal Reelism* are law professors; the others are scholars in fields including philosophy, history, language, and literature.<sup>30</sup> The essays range from simple discussions of recent Hollywood films to highly theoretical analyses of foreign and lesser known domestic cinema. Most consider the treatment of a legal theme within a particular film<sup>31</sup> or genre.<sup>32</sup> Several of the essays do not address themes unique to the legal world, focusing instead on issues, myths, and problems whose significance extends beyond law.<sup>33</sup>

*Legal Reelism* has a defensive tone. Denvir seeks to justify the book's attention to movies, but condescends to his subject in the process. He describes movies as "an escapist mass medium" standing in sharp contrast to traditional subjects of legal scholarship like constitutional theory, one of "the most rigorous of intellectual pursuits."<sup>34</sup> He admits to being "drawn by the irony of the fact that these disposable artifacts intended for the momentary entertainment of the masses have an important role to play in serious academic study of law and justice."<sup>35</sup> Denvir thus starts with the assumption that movies are ephemeral trivia and then seeks to explain why they nonetheless deserve academic attention.

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29. John Denvir, *Introduction* to *LEGAL REELISM*, *supra* note 2, at xii.

30. See *LEGAL REELISM*, *supra* note 2, at 303-05. Many of the same authors, as well as Bergman and Asimow, contributed to a recent law journal symposium on film and legal theory. See Symposium, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F. L. REV. 891 (1996).

31. See, e.g., Anthony Chase, *Popular Culture/Popular Justice*, in *LEGAL REELISM*, *supra* note 2, at 133 (discussing representations of popular justice in the film *LE CRIME DE M. LANGE* (Obéron 1936)); Tom Conley, *The Laws of the Game: Jean Renoir, La Règle du Jeu*, in *LEGAL REELISM*, *supra* note 2, at 95 (describing role of "illegalisms" in *LA RÈGLE DU JEU* (La Nouvelle Edition Française 1939)); Mark Tushnet, *Class Action: One View of Gender and Law in Popular Culture*, in *LEGAL REELISM*, *supra* note 2, at 244 (analyzing opposition of law and justice in the film *CLASS ACTION* (Twentieth Century Fox 1991)).

32. See, e.g., Andrew J. McKenna, *Pubic Execution*, in *LEGAL REELISM*, *supra* note 2, at 225 (discussing sexual difference and violence in recent suspense thrillers); Norman Rosenberg, *Law Noir*, in *LEGAL REELISM*, *supra* note 2, at 280 (examining law's popular representation in 1940s film noir).

33. See, e.g., Judith Grant, *Morality and Liberal Legal Culture: Woody Allen's Crimes and Misdemeanors*, in *LEGAL REELISM*, *supra* note 2, at 154 (considering how law can survive erosion of shared moral understandings by surveying how characters in Woody Allen's film, *CRIMES AND MISDEMEANORS* (Orion 1989), respond to problem of morality in a godless world).

34. John Denvir, *Capra's Constitution*, in *LEGAL REELISM*, *supra* note 2, at 118.

35. Denvir, *supra* note 29, at xii; see also John Denvir, *One Movie No Lawyer Should Miss*, 30 U.S.F. L. REV. 1051, 1051 (1996) (stating that lawyers enjoy movies as a "guilty pleasure" and without suspecting "that movies about law and lawyers have a lot to teach us about the American legal system and the men and women who operate it").

Popular culture as a focus of study needs no such justification. Movies constitute a cultural record of images, ideas, and attitudes about lawyers and law.<sup>36</sup> The fact that movies are, in Denvir's words, "momentary entertainment of the masses" heightens rather than diminishes their significance. As "momentary" entertainment, movies reveal much about the time of their creation and exhibition.<sup>37</sup> Popular culture is precisely what its name suggests—popular. Far more Americans last year saw *The People vs. Larry Flynt*,<sup>38</sup> a box office disappointment, than read any Supreme Court opinion. While movies have only recently emerged as a source of insights about lawyers and legal theory, they have long been the object of serious study outside the legal academy. No one need approach their examination with hesitation or excuse.

*Legal Reelism* also overstates the distinctiveness of the connections between films and law, suggesting that the ability of movies to illuminate themes and problems of legal theory is unusual and surprising.<sup>39</sup> Denvir claims that a classroom discussion of *The Man Who Shot Liberty Valance*<sup>40</sup> suddenly opened his eyes to the realization "that movies reflect powerful myths that influence our reactions to issues we meet in real life, including legal issues."<sup>41</sup> He also posits that the connection between movies and law is a new phenomenon, contending that "the category 'legal' is increasingly porous," that law is "no longer a concept limited to the law reports," and that a new pluralism "has broken law from its narrow institutional bindings, allowing it to spill out into the larger culture."<sup>42</sup>

The ability of films to provide insight on legal themes should not come as a surprise. Movies can be legal texts for the same reasons they can be political, religious, scientific, or historical texts. Intellectual, social, and other climactic changes—from broad currents like

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36. See Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L. J. 1579, 1598-1600 (1989).

37. For sociological analyses of the substantial impact of film and television portrayals of legal practice on popular understandings and perceptions of law, see JAMES M. CARLSON, *PRIME-TIME LAW ENFORCEMENT* (1985), and Valerie P. Hans & Juliet L. Dee, *Media Coverage of Law: Its Impact on Juries and the Public*, 35 AM. BEHAV. SCIENTIST 136 (1991).

38. *THE PEOPLE VS. LARRY FLYNT* (Columbia 1996).

39. Cf. Alex Kozinski, *Foreword to REEL JUSTICE*, *supra* note 1, at xi (suggesting unique affinity among lawyers and filmmakers).

40. *THE MAN WHO SHOT LIBERTY VALANCE* (Paramount 1962).

41. Denvir, *supra* note 29, at xi.

42. *Id.* at xii-xiii. Other essays similarly treat the idea that movies can aid academic discussion of important legal issues as a novel, debatable proposition. See, e.g., Chase, *supra* note 31, at 133; see also Friedman, *supra* note 36, at 1581 (describing how some have viewed law as an autonomous organism set off from the remainder of culture).

post-modern diminution of faith in reason<sup>43</sup> to narrower shifts such as post-Watergate skepticism about government credibility<sup>44</sup>—have an impact on both films and law. Movies bear the imprint of various other texts, including legal ones. These intertextual connections range from explicit citations (similar to the way one judicial opinion cites another) to less distinct, less detectable associations.<sup>45</sup>

*Legal Reelism* also demonstrates why, when analyzing the relations between film and law, identifying causation requires tremendous caution. Having noted a correlation between movies and law, one is tempted to assign a cause and effect for ease of explanation. In her essay in *Legal Reelism*, for example, Margaret Russell discusses how Hollywood racial myths have affected legal and popular discourse about race.<sup>46</sup> Likewise, Terry Wilson's essay describes how generations of Americans have been influenced by cinematic depictions of Indians.<sup>47</sup> Each author frames the question in terms of how films influence law and society.<sup>48</sup> Other essays in *Legal Reelism* reverse the direction of causation: Cheyney Ryan and Francis Nevins, for example, explain how society's myths and conditions influenced Western movies,<sup>49</sup> while Elizabeth Spelman and Martha Minow explore how social forces influenced filmgoers' understandings of *Thelma and Louise*.<sup>50</sup>

These observations are correct but imprecise. The relationships among law, films, and other cultural phenomena are inevitably circular to some extent. Movies both shape and reflect attitudes toward gender and race; they both adopt and help construct American myths about the nation, the frontier, and the law. As Richard Sherwin recognizes in his

43. See Richard K. Sherwin, *Framed*, in *LEGAL REELISM*, *supra* note 2, at 70, 91 (analyzing cinematic depictions of post-modern mistrust of reason in effort to foresee law's post-modern form).

44. Compare WILLIAM J. PALMER, *THE FILMS OF THE SEVENTIES* 12-50, 99-178 (1987) (discussing effect of Watergate scandal on movies of the 1970s), with Margaret A. Berger, *How the Privilege for Governmental Information Met Its Watergate*, 25 *CASE W. L. REV.* 747 (1975) (discussing effect of Watergate scandal on evidentiary privilege for government secrets).

45. See ROLAND BARTHES, *IMAGE, MUSIC, TEXT* 146 (Stephen Heath trans., 1977) (describing text as "a tissue of quotations drawn from the innumerable centres of culture").

46. See Margaret M. Russell, *Rewriting History with Lightning: Race, Myth, and Hollywood in the Legal Pantheon*, in *LEGAL REELISM*, *supra* note 2, at 172.

47. See Terry Wilson, *Celluloid Sovereignty: Hollywood's "History" of Native Americans*, in *LEGAL REELISM*, *supra* note 2, at 199.

48. See Russell, *supra* note 46, at 173; Wilson, *supra* note 47, at 200.

49. See Francis M. Nevins, *Through the Great Depression on Horseback: Legal Themes in Western Films of the 1930s*, in *LEGAL REELISM*, *supra* note 2, at 44, 45 (describing how the Depression brought cynicism and despair to 1930s westerns); Cheyney Ryan, *Print the Legend: Violence and Recognition in The Man Who Shot Liberty Valance*, in *LEGAL REELISM*, *supra* note 2, at 23, 25-27 (considering how political context influenced Cold War westerns).

50. Elizabeth V. Spelman & Martha Minow, *Outlaw Women: Thelma and Louise*, in *LEGAL REELISM*, *supra* note 2, at 261, 262 (considering how social factors such as race, class, and gender affected viewers' understanding of the film *THELMA AND LOUISE* (MGM/UA 1991)).

essay in *Legal Reelism*, law is "both a co-producer and a by-product" of contemporary culture.<sup>51</sup>

*Legal Reelism's* most significant flaw lies in its lack of explicit attention to the process of interpreting movies. While advancing the notion that movies can be legal texts, the contributors offer their interpretations of many films, but generally avoid discussion of the underlying theories, methods, and problems of their endeavor. This absence contrasts with the considerable attention generally devoted to interpretation in academic legal writing about conventional legal texts like constitutions, statutes, and judicial opinions.<sup>52</sup>

This omission reflects the tension within *Legal Reelism* between condescension toward films and humility toward film studies. *Legal Reelism* treats movies as legal texts while implying that, because movies are merely disposable artifacts of mass culture,<sup>53</sup> the process of interpreting them is too simple or straightforward to merit discussion. At the same time, *Legal Reelism* defers respectfully to film theory and scholarship. Denvir's introduction to the collection notes that the contributors are nonspecialists in film and that "the essays that follow do not pretend to be 'film criticism' in any technical sense."<sup>54</sup>

*Legal Reelism* suggests that those interested in law's role in popular culture should mine films and film scholarship for useful evidence and specific insights while steering clear of broader theoretical questions about the meaning and interpretation of films. This suggestion is misguided. If legal scholars treat movies as legal texts, they should acknowledge and address the interpretive issues surrounding that practice. The meaning and significance of any legal text—from the *Carolene Products* footnote<sup>55</sup> to *The Pelican Brief*<sup>56</sup>—is not self-evident.

Denvir's essay in *Legal Reelism*, for example, juxtaposes a film and a conventional legal text:<sup>57</sup> Frank Capra's *It's a Wonderful Life*<sup>58</sup> and Justice Rehnquist's opinion in *DeShaney v. Winnebago County Department of Social Services*.<sup>59</sup> Denvir claims that the film articulates a constitutional dilemma, the tension between the dual needs for community and individual autonomy, more thoroughly than Justice

51. Sherwin, *supra* note 43, at 71.

52. See, e.g., CHESTER J. ANTIEAU, CONSTITUTIONAL CONSTRUCTION (1982); William N. Eskridge, *The Case of the Speluncean Explorers: Twentieth-Century Statutory Interpretation in a Nutshell*, 61 GEO. WASH. L. REV. 1731 (1993).

53. See Denvir, *supra* note 29, at xii.

54. *Id.*; see also Grant, *supra* note 33, at 156 ("This essay is not intended to deepen anyone's understanding of film theory.").

55. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152-53 n.4 (1938).

56. *THE PELICAN BRIEF* (Warner Bros. 1993).

57. Denvir, *supra* note 34, at 118.

58. *IT'S A WONDERFUL LIFE* (RKO/Radio 1946).

59. *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189 (1989).

Rehnquist's opinion. Denvir compares what he considers the implicit meaning of each text, but does not discuss the issues and problems arising from their exegesis. Denvir's respective approaches to the movie and the opinion are strikingly dissimilar. He describes the movie as a "mostly sweet, sometimes saccharine" comedy, but contends its "emotional ambivalence" became apparent after Joseph McBride's biography of Capra revealed the "dark side" of the director's personal life.<sup>60</sup> Denvir's interpretation of *It's a Wonderful Life* relies not just on the film or even on statements Capra made about it, but on a biographer's depiction of the director's life and personality. By contrast, Denvir does not indicate whether or how knowledge about William Rehnquist's experiences or character should affect interpretation of the *DeShaney* opinion. The opinion's meaning is apparently independent of its author's personal life. The disparate methods of interpreting the film and the judicial opinion may be appropriate, but they nonetheless warrant explicit discussion and justification.

*Legal Reelism* contains a few essays that explicitly address interpretive issues, and these exceptions demonstrate the merit of the endeavor. For example, in her essay on Spike Lee's *Do the Right Thing*<sup>61</sup> and Hollywood's racial mythology, Margaret Russell considers how legal texts and films raise similar questions of authorship and perspective.<sup>62</sup> She discusses the similarities between critical legal theory and critical film theory "in questioning the power of the text to shape racial realities, attitudes, and perceptions."<sup>63</sup> In his discussion of *The Godfather* and its sequels,<sup>64</sup> David Papke acknowledges that films do not have objective or fixed meanings, and he explores the interaction among director Francis Ford Coppola's intended messages, the films' content, and the audience's response to the films.<sup>65</sup> Papke's analysis thus deals with the meaning of *The Godfather* films and also with the broader notion that "[c]ultural artifacts are not simply containers into which writers, composers, and directors pour meanings that will later be drained by readers, listeners, and viewers."<sup>66</sup> As these two essays demonstrate,

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60. Denvir, *supra* note 34, at 122-23.

61. *DO THE RIGHT THING* (Universal 1989).

62. See Russell, *supra* note 46, at 178-79.

63. *Id.* at 180.

64. *THE GODFATHER* (Paramount 1972); *THE GODFATHER, PART II* (Paramount 1974); *THE GODFATHER, PART III* (Paramount 1990).

65. See David Ray Papke, *Myth and Meaning: Francis Ford Coppola and Popular Response to the Godfather Trilogy*, in *LEGAL REELISM*, *supra* note 2, at 1.

66. *Id.* at 17; see also Norman Rosenberg, *Professor Lightcap Goes to Washington: Rereading Talk of the Town*, 30 U.S.F. L. REV. 1083 (1996) (discussing interpretive strategies and applying approach that recognizes "multivocal" nature of film and legal texts).

acknowledging interpretive issues can lead to ideas beyond the insights one movie offers about a legal principle.

### III

#### HITCHCOCK'S MOVIES ABOUT LAWYERS AND LAW

The foregoing observations about *Reel Justice* and *Legal Reelism* can be demonstrated in more concrete form by looking closely at three movies about criminal trials directed by Alfred Hitchcock: *The Paradine Case*, *I Confess*, and *The Wrong Man*. Each film is the subject of an entry in *Reel Justice*, and each is a movie about law or a "legal text" as defined in *Legal Reelism*. Hitchcock's films are ideal examples for study because no group of movies has played a greater role in the development of thinking about films. To trace the discussion of Hitchcock's films is essentially to trace the history of film interpretation.<sup>67</sup>

Examining Hitchcock's "courtroom movies" and the critical reaction to them underscores several points. Treating the movies as legal texts requires resolution of critical questions about interpretation. Interpreting a film differs from interpreting other legal texts, just as interpreting the First Amendment differs from interpreting the Internal Revenue Code. At a certain level of abstraction, however, the principal methods and controversies are the same. The overlap of approaches and problems between film and legal interpretation is not surprising because similar fundamental issues lie at the core of textual interpretation of all kinds.<sup>68</sup> Frank discussion of these issues offers an opportunity for fruitful cross-pollination through which film studies and legal theory can influence and illuminate one another.<sup>69</sup>

Examining the Hitchcock movies also suggests possible justifications for assessing a film's legal authenticity, or lack thereof. While the extent of a movie's adherence to legal reality is of little interest as evidence of the filmmaker's knowledge or ignorance of legal rules and procedures, it becomes significant to the extent it indicates something about a movie's meaning or importance.

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67. See Corey K. Creekmur & Alexander Doty, *Introduction* to *OUT IN CULTURE* 1, 8 (Corey K. Creekmur & Alexander Doty eds., 1995) (describing how "Hitchcock's films, more than those of anyone else, have become the 'test cases' for each new position in film theory and criticism whether auteurism, semiotics-structuralism, feminism, ideological analysis, or psychoanalysis").

68. The same issues arise, for example, in literary criticism. See Kenneth S. Abraham, *Statutory Interpretation and Literary Theory: Some Common Concerns of an Unlikely Pair*, 32 *RUTGERS L. REV.* 676 (1979). They also arise in Biblical interpretation. See SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (1988).

69. One feminist study of Hitchcock's films, for example, borrows ideas about the subjectivity of concepts like "rape" from feminist legal scholarship. See TANIA MODLESKI, *THE WOMEN WHO KNEW TOO MUCH* 17 (1988).

### A. *Hitchcock's Movies*

The Hitchcock movies, each made after the director's 1939 emigration from London to Hollywood, involve criminal trials in three different legal systems: English, Canadian, and American.

*The Paradine Case* concerns Anthony Keane (Gregory Peck), a celebrated English barrister who becomes infatuated with his client, the widow Paradine, a beautiful young woman accused of poisoning her blind, aged husband. His judgment distorted by personal feelings, Keane disregards his client's wishes and tries to place blame for the murder on the dead man's valet. Keane's cross-examination not only forces the valet to admit having had an affair with Mrs. Paradine, but drives the valet to suicide. Furious at her lawyer, Mrs. Paradine takes the witness stand and reveals that Keane loves her, that she loved the valet, and that she killed her husband. Keane leaves the courtroom in humiliation and his client goes to the gallows.<sup>70</sup>

In *I Confess*, a Québécois priest, Father Michael Logan (Montgomery Clift), hears the confession of Otto Keller, a man who has just committed a murder. Keller disguised himself as a priest to rob a lawyer's home, but when the lawyer surprised Keller in the midst of the burglary, Keller killed him. The police soon begin to suspect Father Logan of the murder. Logan had a motive—the lawyer was blackmailing a woman Logan once loved—and, because of the confidentiality of confession, Logan refuses to provide answers that would clear him of the crime. Logan winds up on trial and, although he does not betray Keller's confession, the jury acquits him for lack of evidence. As an angry mob gathers around Logan on the courthouse steps, Keller's wife exposes her husband as the real killer. Following a shoot-out with police, Keller dies in Father Logan's arms.<sup>71</sup>

Hitchcock's third legal drama, *The Wrong Man*, is a quasi-documentary account of an actual case<sup>72</sup> involving a New York musician, Manny Balestrero (Henry Fonda), arrested and prosecuted for robberies committed by a look-alike stranger. Balestrero's wife blames herself for his misfortune and suffers a mental breakdown. Balestrero avoids conviction only because the judge must grant a mistrial after a juror already convinced of Balestrero's guilt interrupts one of the defense counsel's examinations to ask "Your honor, do we have to sit and listen to this?" Before he can be retried, Balestrero prays for help and

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70. For a complete plot description, see REEL JUSTICE, *supra* note 1, at 181-83.

71. See *id.* at 207-10.

72. See Herbert Brean, *A Case of Identity*, LIFE, June 1953, at 97 (recounting the real case depicted in *The Wrong Man*).

the police capture the real culprit committing another robbery. Balestrero goes free, but his wife takes years to recover.<sup>73</sup>

Hitchcock's courtroom dramas made lackluster showings at the box office and critical reaction was generally negative.<sup>74</sup> Reviews complained that the movies featured too much talking and not enough action and suspense.<sup>75</sup> Critics of the 1940s and 1950s regarded Hitchcock as a master of suspense, but had little respect for that genre, favoring instead the earnest, liberal "social problem" pictures common during that era. These writers made no attempt to interpret Hitchcock's films, because they considered them merely clever entertainment without deeper meaning.<sup>76</sup> As one put it, Hitchcock's films "are interesting neither for their ideas nor for their characters;" none "can be said to carry any sort of a 'message,'" and when a theme does appear "it is banal in the extreme."<sup>77</sup>

### B. *Intentionalism*

A small group of young French film enthusiasts in the early 1950s was the first to take Hitchcock seriously. The influence of these writers, particularly those connected with a new journal, *Cahiers du Cinéma*, was enormous. Their approach, dubbed "politiques des auteurs," centered on the director as the creator or author of a film's meaning. They argued that great directors, even those working within the confines of Hollywood's rigid studio systems, leave unique stylistic and thematic marks on their films.<sup>78</sup> Treating movies as means by which directors

73. See REEL JUSTICE, *supra* note 1, at 226-31.

74. See GENE D. PHILLIPS, ALFRED HITCHCOCK 120, 131 (1984).

75. See Bosley Crowther, 'I Confess,' *Hitchcock Drama of Priest's Dilemma Starring Clift*, N.Y. TIMES, Mar. 23, 1953, at 28 (finding the movie "entertainment that tends to drag, sag and generally grow dull"); Bosley Crowther, *Selznick and Hitchcock Join Forces on 'Paradine Case,'* N.Y. TIMES, Jan. 9, 1948, at 26 (finding "[c]ourtroom action tends to weary"); Philip T. Hartung, *Cucullus Non Facit Monachum*, 57 THE COMMONWEAL 550 (1953) (finding *I Confess* "long and talky," with "good dialogue but no action"); Philip T. Hartung, *My Wife, Poor Wretch*, 47 THE COMMONWEAL 373 (1948) (finding *The Paradine Case* "much too wordy and much too long"); Robert Hatch, *Review of The Wrong Man*, 184 NATION 27 (1957) (finding movie "lacks fireworks and suspense"); John McCarten, *Murder by Selznick*, NEW YORKER, Jan. 10, 1948, at 77 (finding characters talk so much in *The Paradine Case* that climactic scenes are "hardly more stimulating than a high school debate"); *Review of I Confess*, TIME, Mar. 2, 1953, at 92 (finding movie dragged down by "talky courtroom trial"); A. H. Weiler, *Suspense Is Dropped in 'The Wrong Man,'* N.Y. TIMES, Dec. 24, 1956, at 8 (finding that movie "rarely stir[s] the emotions or make[s] a viewer's spine tingle").

76. See RAYMOND DURGNAT, *THE STRANGE CASE OF ALFRED HITCHCOCK* 21-22 (1974); FOCUS ON HITCHCOCK 1-17 (Albert J. LaValley ed., 1972) [hereinafter FOCUS ON HITCHCOCK].

77. Lindsay Anderson, *Alfred Hitchcock*, in FOCUS ON HITCHCOCK, *supra* note 76, at 48, 58.

78. See DAVID BORDWELL, *MAKING MEANING* 65-66 (1989); SUSAN HAYWARD, *KEY CONCEPTS IN CINEMA STUDIES* 12-15 (1996); ROBERT LAPSLEY & MICHAEL WESTLAKE, *FILM THEORY* 123 (1988). Some of the leading *Cahiers* writers—François Truffaut, Jean-Luc Godard, Eric Rohmer, Claude Chabrol, Jacques Rivette—went on to significant filmmaking success of their own in a "new wave" of French cinema that began by the end of the 1950s.

communicate, these auteur critics placed heavy emphasis on filmmakers' statements, and extensively interviewed chosen directors to gain greater insight into their films' messages.<sup>79</sup>

The broad outlines of the auteur approach match those of traditional interpretations of legal texts.<sup>80</sup> Courts have generally assumed, for example, that statutory interpretation should be a search for the intent or meaning of the enacting legislature.<sup>81</sup> Rather than relying solely on a statute's text, courts look to "authorial statements" found in its legislative history. Judicial dependence on these authorial statements has rivaled or exceeded that of the auteur film critics. Some observers claim, only half in jest, that courts turn to the statute's language only when the committee reports are ambiguous.<sup>82</sup> Originalism, or author-centered interpretation of the Constitution, has left its mark throughout the case law as well, with courts searching the *Federalist Papers* and other historical sources for clues to the Framers' intent and the Constitution's meaning.<sup>83</sup>

Almost immediately, Hitchcock was a primary focus of *Cahiers* attention. The French writers attacked the prevailing dismissive attitude toward Hitchcock, promoted his recent, American-made films as his best work, and discerned in all his films a constant, fundamental theme. But-tressing their argument through references to Hitchcock's strict Catholic

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79. See BORDWELL, *supra* note 78, at 50, 66-67. A spate of interview collections appeared in the United States after the auteur approach achieved full flower. See, e.g., INTERVIEWS WITH FILM DIRECTORS (Andrew Sarris ed., 1967); BERNARD KANTOR ET AL., DIRECTORS AT WORK (1970); CHARLES THOMAS SAMUELS, ENCOUNTERING DIRECTORS (1972); RICHARD SCHICKEL, THE MEN WHO MADE THE MOVIES (1975); ERIC SHERMAN & MARTIN RUBIN, THE DIRECTOR'S EVENT (1970).

80. The parallel between auteurism and intentionalism, as between any film interpretation and statutory or constitutional interpretation, is not exact. For example, the "politiques des auteurs" called for considering each film in relation to the director's entire body of work. Because an auteur's films will bear the common imprint of their maker's unique signature, albeit in increasingly refined form as the director grows more skillful and mature with each successive film, the elements of that signature can best be identified by comparing the films. The interpretation of conventional legal texts, such as statutes and contracts, more often proceeds without reference to other works by the same author. But cf., e.g., *United States v. American Bldg. Maintenance Indus.*, 422 U.S. 271, 277 (1975) (interpreting statute by reference to another of common origin); RESTATEMENT (SECOND) OF CONTRACTS § 214(c) (1981) (noting that examination of earlier contract may help interpretation of later one).

81. See Philip P. Frickey, *From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Interpretation*, 77 MINN. L. REV. 241, 243 (1992); Earl M. Maltz, *Rhetoric and Reality in the Theory of Statutory Interpretation: Underenforcement, Overenforcement, and the Problem of Legislative Supremacy*, 71 B.U. L. REV. 767, 767 (1991).

82. See Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 543 (1947); Patricia M. Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 IOWA L. REV. 195, 197 (1983).

83. Theoretical arguments on behalf of "originalism" have sparked much controversy. See, e.g., Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L. J. 1 (1971); Edwin Meese III, *Toward a Jurisprudence of Original Intent*, 11 HARV. J. L. & PUB. POL'Y 5 (1988). Nonetheless, the Supreme Court has often indicated that the aim of constitutional interpretation is to ascertain and to honor the Framers' intent. See ANTIEAU, *supra* note 52, at § 3.00.

upbringing and Jesuit education, and perhaps sensitized by their own Catholic backgrounds, the French critics found that Hitchcock's films revolve around Catholic conceptions of original sin. They argued that each of his movies features a transfer of guilt, in which an innocent but weak central character is stained by somehow capitulating to a stronger, evil double. The transfer is ultimately an illusion in some sense, because the nominally innocent are only superficially and falsely so. All characters in the films, like all people in the world, are part of one community of sin and interchangeable guilt.<sup>84</sup>

In this view, Hitchcock's religious concerns had close parallels—in his life and in his films—with his feelings about secular law. Hitchcock's Jansenist conception of a harsh, implacable God who plays with human destinies matched his paralyzing fear of legal authority. Hitchcock endlessly repeated one anecdote about his childhood to the point where, whether true or not, it became a critical reflection of him.<sup>85</sup> As a young boy, Hitchcock spent hours riding the bus lines to every part of London, but ran short of fare one day at a distant stop and had to trek home on foot, arriving after dark. His father said nothing, but sent him to the police station with a note which instructed the constable to lock little Alfred in a jail cell. The five minutes Hitchcock purportedly spent in the cell instilled in him a lifelong terror of the police and of any unanticipated confrontation with the law. According to Hitchcock, the worst part was "the clang of the door . . . the sound and the solidity of that closing cell door and the bolt."<sup>86</sup> As an adult, Hitchcock would not even drive a car for fear of being punished for some traffic infraction.<sup>87</sup> Asked what he wanted inscribed on his tombstone, he suggested the constable's warning: "This is what we do to bad little boys."<sup>88</sup>

Hitchcock's attitudes toward secular and religious justice intertwined. He described the Jesuits who educated him as "religious policemen."<sup>89</sup> He considered the English criminal courts symbolically

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84. English translations of the early articles are scattered through a number of sources. *Cahiers* devoted its October 1954 issue to Hitchcock. See, e.g., André Bazin, *Hitchcock versus Hitchcock*, in *FOCUS ON HITCHCOCK*, *supra* note 76, at 60; François Truffaut, *Skeleton Keys*, *FILM CULTURE*, Spring 1964, at 63 (Aruna Vasudev trans.). Two essays on *The Wrong Man* appeared in the June 1957 issue. See JEAN-LUC GODARD, *GODARD ON GODARD* 48-55 (Jean Narboni & Tom Milne eds., 1972); FRANÇOIS TRUFFAUT, *THE FILMS IN MY LIFE* 83-86 (Leonard Mayhew trans., 1978). The *Cahiers* view of Hitchcock's films found fullest expression in a book-length study of Hitchcock's films first published in 1957. See ERIC ROHMER & CLAUDE CHABROL, *HITCHCOCK* (Stanley Hochman trans., Frederick Ungar Publishing Co. 1979).

85. See PHILLIPS, *supra* note 74, at 27-28; DONALD SPOTO, *THE DARK SIDE OF GENIUS* 16 (1983).

86. SCHICKEL, *supra* note 79, at 275.

87. See PHILLIPS, *supra* note 74, at 28.

88. SPOTO, *supra* note 85, at 399.

89. PHILLIPS, *supra* note 74, at 28.

horrible, with the prisoners kept below the court in an underworld of claustrophobic cells and brought up to face judgment from atop the high bench.<sup>90</sup> In Hitchcock's films, "'every representative of the established order (policeman, judge, statesman, etc.) is a representative of God,'" and therefore someone to fear.<sup>91</sup>

Taking comfort in neither divine nor earthly law, Hitchcock viewed the world as a place where innocence and guilt are confused and a thin veneer of order and civilization stretches over chaos and uncertainty.<sup>92</sup> He defined evil as "complete disorder."<sup>93</sup> His movies reflect this fear of disorder and the breakdown of institutions and systems—especially legal ones—designed to keep the irrational and absurd at bay. In his films, innocents die along with the guilty.<sup>94</sup> Legal processes constantly go awry and never can achieve justice.<sup>95</sup> Hitchcock had no faith in legal systems as rational arbiters of truth.<sup>96</sup> To him, courtrooms were "legal fictions keeping up a pretense of rationality in an irrational world."<sup>97</sup> He found the bailiffs' calls for "Order in the Court" the most revealing aspect of courtroom procedure. The cries struck him as an admission that to have order in the court would be a special thing, disorder being the courts' natural state.<sup>98</sup>

From the French critics' auteurist perspective, Hitchcock's movies about criminal trials have central importance. They embody most explicitly his fundamental personal themes.<sup>99</sup> Each depicts vividly the experience of arrest and incarceration, and features the sound of the

90. See Richard Schickel, *We're Living in a Hitchcock World*, *All Right*, N.Y. TIMES, Oct. 29, 1972, § 6 (Magazine), at 22, 46.

91. DURGNAT, *supra* note 76, at 23-24 (quoting JEAN DOUCHET, ALFRED HITCHCOCK (1967)).

92. See Schickel, *supra* note 90, at 40.

93. SCHICKEL, *supra* note 79, at 278.

94. For example, the shooting death of an innocent woman immediately precedes that of her guilty husband in *I Confess*. Likewise, the murder of Colonel Paradine leads to the suicide of his loyal valet as well as the execution of his treacherous wife in *The Paradine Case*.

95. See Maurice Yacowar, *Hitchcock's Imagery and Art*, in A HITCHCOCK READER 16, 17 (Marshall Deutelbaum & Leland Poague eds., 1986) (describing Hitchcock's justice as "tricky, poetic rather than legal"); Edward Buscombe, *Dickens and Hitchcock*, *SCREEN*, Aug./Sept. 1970, at 97, 111 (claiming Hitchcock used his "own personal feelings about the law to prevent the audience from assuming an identity between the forces of law and the forces of good").

96. See Yacowar, *supra* note 95, at 19; Buscombe, *supra* note 95, at 111; Philip Dynia, *Alfred Hitchcock and the Ghost of Thomas Hobbes*, *CINEMA J.*, Spring 1976, at 27, 38-39.

97. Schickel, *supra* note 90, at 46.

98. See SCHICKEL, *supra* note 79, at 279.

99. See TRUFFAUT, *THE FILMS IN MY LIFE*, *supra* note 84, at 86; cf. PETER BOGDANOVICH, *THE CINEMA OF ALFRED HITCHCOCK* 5, 6 (1963) (calling *I Confess* one of Hitchcock's "most personal" films and *The Wrong Man* his "definitive statement on guilt and innocence"). Hitchcock had plans in 1959 to make another film along similar lines: *No Bail for the Judge*, about a wrongly-accused judge and his barrister daughter (Audrey Hepburn) who investigates and wins his release. Hepburn backed out and the project died. See SPOTO, *supra* note 85, at 409-11.

slamming cell door that so frightened little Alfred.<sup>100</sup> The movies emphasize the kinship between religion and the ostensibly secular legal system. The first portion of *The Wrong Man*, for example, walks methodically through "the formalities—the rites, one is tempted to say—of police and legal procedure."<sup>101</sup> In discussing *The Wrong Man*, Hitchcock used the phrase "violation of the ritual" to describe the legal error that necessitated a mistrial.<sup>102</sup>

Hitchcock's jaundiced view of law and its representatives appears throughout these films. In *The Paradine Case*, it takes the form of a judge who, like Hitchcock's God, revels in his power to command death and delights in others' suffering. The legal machinery depicted in the movie cannot achieve justice or make credible moral judgments because of the weakness of its human representatives. In *I Confess*, Hitchcock reduces the image of the scales of justice to a mere parlor trick, represented by the smug, shallow Crown Prosecutor playfully balancing a knife and fork on a glass in one scene, and balancing a glass of water on his forehead in another.<sup>103</sup> In *The Wrong Man*, Hitchcock offers his view of courtrooms in a scene in which, during a break in the proceedings, the accused man sees how trivial the trial is for everyone but him. As his life disintegrates, guards and jurors chat, a woman touches up her lipstick, a prosecutor and his assistant share a joke, and a juror polishes his glasses. The courtroom proceeding appears simultaneously hellish and mundane.

Courts or the legal process never locate the truth in these movies. Truth emerges only by a malfunction of the legal system, or by chance. Keane makes headway toward an undeserved acquittal for his client in *The Paradine Case* by casting suspicion on her late husband's valet. By so doing, he drives the valet to suicide, prompting his client to reveal that *she* committed the murder. The jury acquits Father Logan in *I Confess*, but the foreman makes clear it is only because of the lack of evidence.<sup>104</sup> The jury thinks Father Logan is probably guilty, and the mob outside the courthouse is certain of it. The truth comes out only when the killer's wife betrays him and reveals his guilt. A juror's fortuitous outburst forces a mistrial and saves Manny Balestrero from

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100. See FRANÇOIS TRUFFAUT, *HITCHCOCK* 174 (Simon & Schuster revised, 1984) (Hitchcock on *The Paradine Case*: "It may be an expression of my own fear, but I've always felt the drama of a situation in which a normal person is suddenly deprived of freedom and incarcerated with hardened criminals."); *id.* at 243 (Hitchcock on *The Wrong Man*: "But I did fancy the opening of the picture because of my own fear of the police.").

101. ROHMER & CHABROL, *supra* note 84, at 146.

102. See TRUFFAUT, *supra* note 100, at 235.

103. See *id.* at 205.

104. The off-screen reason for Father Logan's acquittal was Catholic leaders' discomfort with a movie depicting the criminal conviction, however unjust, of a priest. See PHILLIPS, *supra* note 74, at 131-32.

conviction in *The Wrong Man*, and he avoids retrial only when his prayers are answered and police capture the real culprit.

Most importantly, at each film's heart lies the transfer of guilt that the *Cahiers* critics identified as Hitchcock's signature theme. In *The Paradine Case*, Keane's infatuation with his client—the alluring, enigmatic Mrs. Paradine—leads him to compromise his position as a guardian of justice and to become tainted with her guilt.<sup>105</sup> In *I Confess*, the mechanism of transfer is the Catholic ritual of sacramental confession, which discharges the guilty and obliges the confessor to take the sin upon himself.<sup>106</sup> Father Logan literally stands trial in place of the man who confessed to him. In *The Wrong Man*, there are transfers of guilt in several respects. Like Father Logan, Manny becomes a surrogate bearing the legal consequences of another man's crime. Although entirely innocent, he assigns himself responsibility, saying "I've brought it all on myself." After his initial prosecution ends in a mistrial, he declares "I think it would have been better if they'd found me guilty." The guilt carries over to Manny's wife, who suffers a nervous breakdown under its weight. She blames herself for her husband's misfortune, telling him, "It's my fault this happened to you" and telling her psychiatrist "They knew he wasn't guilty. I was guilty. . . . They know I'm guilty." *The Wrong Man* represents the transfer of guilt more literally through a celebrated sequence in which, as Manny prays before an icon of Christ, the image of the Savior dissolves into a shot of Manny's face and then dissolves again into the face of the real culprit.<sup>107</sup> Truffaut thought it the most beautiful shot in any of Hitchcock's films and a perfect summary of them all.<sup>108</sup>

### C. Textualism

Skeptics raised significant objections to the *Cahiers* writers' techniques and conclusions.<sup>109</sup> Their attacks on the auteur approach to film

105. See ROHMER & CHABROL, *supra* note 84, at 88-89.

106. See *id.* at 115.

107. For discussions of how Hitchcock's "wrong men" like Manny Balestrero and Father Logan recapitulate Christ, see NEIL P. HURLEY, SOUL IN SUSPENSE 80-94, 138-42 (1993), and Robert Stam, *Hitchcock & Buñuel: Desire and the Law*, in THE CINEMATIC TEXT 23 (R. Barton Palmer ed., 1989).

108. See TRUFFAUT, THE FILMS IN MY LIFE *supra* note 84, at 86.

109. Andrew Sarris, the American exponent of an exaggerated version of the *Cahiers* line, bore the brunt of the attacks. See Andrew Sarris, *Notes on the Auteur Theory in 1962*, FILM CULTURE, Winter 1962/63, at 1; Pauline Kael, *Circles and Squares*, FILM Q., Spring 1963, at 12; Andrew Sarris, *The Auteur Theory and the Perils of Pauline*, FILM Q., Summer 1963, at 26. A subsequent exchange appeared in *Film Quarterly* as auteur theory's influence waned. See Graham Petrie, *Alternatives to Auteurs*, FILM Q., Spring 1973, at 27; John Hess, *Auteurism and After: A Reply to Graham Petrie*, FILM Q., Winter 1973-74, at 28; Andrew Sarris, *Auteurism Is Alive and Well*, FILM Q., Fall 1974, at 60. For an acid exchange that was ostensibly a debate about auteur theory, see Andrew Sarris, *Sarris on Simon: He's the 'Dracula of Critics'*, N.Y. TIMES, Feb. 14, 1971, § 2, at 1; John Simon, *Simon on Sarris: He Desires 'Flight from Reality'*, N.Y. TIMES, Feb. 14, 1971, § 2, at 1.

interpretation parallel recent attacks on intentionalist interpretation of statutes. The production of movies in Hollywood, like the creation of statutes in Washington, involves complex, multi-faceted systems of competing interests, bureaucracy, and compromise. Treating the remarks of the director—one participant in the film's creation—as dispositive evidence of the film's meaning suffers from the same defects as undue reliance on the floor remarks of one legislator or a snippet from a committee report for the definitive explanation of a law.<sup>110</sup> The production of *The Paradine Case*, for example, was a bitter war between Hitchcock and producer David Selznick, with endless disputes over casting, scripting, and spending.<sup>111</sup> Even when it comes to shooting a picture, second-unit directors often film critical scenes, just as congressional staffers write much legislative history.<sup>112</sup> These institutional realities make it difficult to treat either kind of text, cinematic or statutory, as the expression of a coherent, identifiable author.

In the case of Hitchcock, skeptics rejected the French critics' strained efforts to obtain authorial confirmation of their interpretations. During interviews, Hitchcock alternated between revealing and obscuring his thoughts and intentions, to the frustration and disappointment of his questioners.<sup>113</sup> André Bazin, a *Cahiers* founder and a cautious admirer of Hitchcock's films, described how he explained to Hitchcock the metaphysical theme of guilt transfer observed by the young French critics. It was apparently news to Hitchcock that his films contained that theme, but he confessed after a moment's thought that it seemed true, leading Bazin to conclude that "[i]t was the only incontrovertible point made by Hitchcock's enthusiasts, but if this theme really exists in his

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110. Compare V. F. PERKINS, *FILM AS FILM* 158-71 (1972) (describing directors' role in factory-like process of filmmaking), with *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395-96 (1951) (Jackson, J., concurring) (criticizing judicial reliance on "casual statements from floor debates, not always distinguished for candor or accuracy, as a basis for making up our minds what law Congress intends to enact"), and *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 620 (1991) (Scalia, J., concurring in judgment) (scoffing at notion that committee reports indicate "what Congress as a whole thought").

111. See LEONARD J. LEFF, *HITCHCOCK AND SELZNICK* 224-64 (1987); MEMO FROM DAVID O. SELZNICK 360, 363-64 (Rudy Behlmer ed., 1989); SPOTO, *supra* note 85, at 294-302.

112. For example, some have suggested the famous shower scene in the film *PSYCHO* (Paramount 1960) owes more to second-unit director Saul Bass than to Hitchcock. See BREWER'S *CINEMA 500* (Jonathan Law et al. eds., 1995); Jim Supanik, *Saul Bass: 'To Hit the Ground Running.'* *FILM COMMENT*, Mar./Apr. 1997, at 72, 74.

113. See PETER BOGDANOVICH, *WHO THE DEVIL MADE IT* 480 (1997); FOCUS ON HITCHCOCK, *supra* note 76, at 2-3; ROBIN WOOD, *HITCHCOCK'S FILMS REVISITED* 61 (1989). The attempts to elicit profound revelations from Hitchcock sometimes became comical. Truffaut asked Hitchcock the symbolic meaning of the direction arrows on signs that appear in the opening scene of *I Confess*, to which Hitchcock responded, "[T]hey use them to indicate one-way streets." TRUFFAUT, *supra* note 100, at 195. Asked whether Father Logan, the protagonist of *I Confess*, slept with a woman prior to his ordination, Hitchcock contradicted himself in his short reply: "I hope so. Far be it from me as a Jesuit to encourage that kind of behavior." BOGDANOVICH, *supra* note 99, at 31.

work he owes it to them for having discovered it."<sup>114</sup> Later, Hitchcock rejected interviewer François Truffaut's repeated attempts to elicit confirmation of the idea that concepts of original sin permeate the films.<sup>115</sup> Hitchcock's intransigence reduced Truffaut to claiming that Hitchcock was well aware of the theme of guilt transfer in his work but lied about it to critics and journalists.<sup>116</sup>

The premises and conclusions of auteur analysis soon inspired countervailing trends. One alternative approach disregards authorial intent in favor of focusing solely on the text. This "object-centered" interpretation treats films as autonomous works of art distinct from creators' meaning.<sup>117</sup> In law, a similar brand of textualism, endorsed by Justice Scalia and other jurists, has generated considerable scholarly debate.<sup>118</sup> With a focus on the text alone, the issue becomes "not what the author probably put in but what the critic can plausibly get out,"<sup>119</sup> or as Oliver Wendell Holmes put it, "[w]e do not inquire what the legislature meant; we ask only what the statute means."<sup>120</sup>

In Hitchcock's case, the problems of author-centered interpretation prompted a critical backlash. After talking to Hitchcock, André Bazin concluded that artistic creation must be more intuitive than rational or calculated, and recommended an "objective criticism, methodically ignoring 'intentions.'"<sup>121</sup> Others went further, decrying the *Cahiers* approach as silly and inflated.<sup>122</sup> They accused Hitchcock's admirers of making meaning where none existed. One skeptic claimed Hitchcock's works were full of amusing tricks and empty of all else: "they mean nothing: they lead to nothing."<sup>123</sup> Another mocked Truffaut for his interviews with Hitchcock, describing him as "eager to draw the master

114. Bazin, *supra* note 84, at 67.

115. See TRUFFAUT, *supra* note 100, at 317.

116. See Truffaut, *Skeleton Keys*, *supra* note 84, at 66.

117. See BORDWELL, *supra* note 78, at 67-69; see also PERKINS, *supra* note 110, at 172-76.

118. See, e.g., William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621 (1990); William N. Eskridge, Jr. & Philip P. Frickey, *The Supreme Court—1993 Term—Foreword: Law as Equilibrium*, 108 HARV. L. REV. 26, 77-81 (1994); Richard J. Pierce, Jr., *The Supreme Court's New Hypertextualism: An Invitation to Cacophony and Incoherence in the Administrative State*, 95 COLUM. L. REV. 749 (1995).

119. BORDWELL, *supra* note 78, at 68.

120. Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 HARV. L. REV. 417, 419 (1899), reprinted in OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS 207 (1920).

121. Bazin, *supra* note 84, at 62. For others advocating or applying to Hitchcock's films a textual analysis detached from the artist's intentions, see WOOD, *supra* note 113, at 61-62; WILLIAM ROTHMAN, HITCHCOCK (1982); William Rothman, *How Much Did Hitchcock Know?*, 5 Q. REV. FILM STUD. 383, 386 (1980).

122. For forceful arguments that Hitchcock's films have limited thematic significance, see DURGNAT, *supra* note 76; Charles Higham, *Hitchcock's World*, FILM Q., Winter 1962-63, at 3; Penelope Houston, *The Figure in the Carpet*, 32 SIGHT & SOUND 159 (1963); Robert Mazzocco, *It's Only a Movie*, N.Y. REV. BOOKS, Feb. 26, 1970, at 27.

123. GRAHAM GREENE, *THE PLEASURE-DOME 2* (John Russell Taylor ed., 1972).

out, but without guile, displaying an almost boyish enthusiasm for everything [Hitchcock] has done, and for everything he says; telling over the most banal details of the action with spellbound relish."<sup>124</sup> These critics found in Hitchcock's movies only "[i]ntellectual emptiness and spurious realism."<sup>125</sup>

#### D. Structuralism

When a new wave of thought swept film study, Hitchcock's films again landed at the fore. Film interpretation prior to the late 1960s—whether focusing on the author or the text alone—consisted of explicating individual films' implicit themes or meanings.<sup>126</sup> Structural criticism, a trend imported from other academic disciplines, meant searching instead for universal, underlying features common to all films. France was again the source of the new current. Ferdinand de Saussure's and Roland Barthes' efforts to identify fundamental structures of languages inspired similar structuralist thought by Claude Lévi-Strauss in anthropology, Jacques Lacan in psychoanalysis, and Marxist philosopher Louis Althusser with respect to ideology.<sup>127</sup> In turn, their writings had a tremendous impact on academic thinking about film. Film theorists began arguing that the real meanings of films are unintended and repressed, lying not in the filmmaker's expression or in a particular film's idiosyncratic themes, but in all films' reflection of universal patterns of the human mind and modern culture.<sup>128</sup>

Structuralism has its legal counterparts as well. Legal intellectual history includes various schools of thought finding ideological, psychological, social, political, and economic forces at work beneath the rhetoric and apparent meaning of legal texts, from the Legal Realists of the 1920s and 1930s to the Critical Legal Studies movement of the

124. Gavin Millar, *Hitchcock versus Truffaut*, 38 SIGHT & SOUND 82, 82-83 (1969).

125. Charles Thomas Samuels, *Hitchcock*, 39 AM. SCHOLAR 295, 297 (1970).

126. See BORDWELL, *supra* note 78, at 43-70; see also DUDLEY ANDREW, CONCEPTS IN FILM THEORY 111-12 (1984) (describing approach prior to 1970s that "valued individual films . . . [and] listened to each text for the sound of its voice (for some, the voice of the author; for others, the voice of art or even the transcendent voice of nature)").

127. See HAYWARD, *supra* note 78, at 15-17, 350-52.

128. See BORDWELL, *supra* note 78, at 71-73; see also ANDREW, *supra* note 126, at 112 (describing new focus in film studies on "the standardization beneath the apparent but insignificant differences among texts . . . the ultimate sameness of all films"); THE CINEMA BOOK 165 (Pam Cook ed., 1985) (describing shift from "the search for some pre-existing essential meaning" to search for "the underlying sets of relationships both within and between cultural objects"); Slavoj Žižek, 'In His Bold Gaze My Ruin Is Writ Large,' in EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT LACAN (BUT WERE AFRAID TO ASK HITCHCOCK) 211, 212 (Slavoj Žižek ed., 1992) [hereinafter EVERYTHING] (describing how semiotic and psychoanalytic analyses in 1970s overshadowed former Cahiers approach).

1980s and 1990s.<sup>129</sup> Charles Beard long ago explained the Constitution as the result of financial forces and class interests.<sup>130</sup> "Law and economics" scholars more recently have interpreted statutes and common-law decisions as products of fundamental principles of economic efficiency.<sup>131</sup> Other scholars have sought to expose and challenge law's—like film's—unthinking incorporation and perpetuation of dominant racial, gender, and sexual conceptions.<sup>132</sup>

Alongside their corrosive, demystifying core, critical legal and film studies share a common progressive element. In film studies, Marxist, feminist, and other critics have searched for repressed meanings that disrupt Hollywood movies' reactionary themes.<sup>133</sup> In law, the Legal Realism and Critical Legal Studies movements have included a "utopian enterprise in which Realist writers have attempted to reimagine law, to adumbrate a vision of what legal institutions might look like in a just society."<sup>134</sup>

Hitchcock's movies served as principal subjects for the new structuralist interpretive approaches. These new ways of thinking about movies led to conclusions about Hitchcock's films that differed radically from those of the past. To take just one example, the most thoroughly pursued and influential of the new interpretations came from psychoanalytic corners. Critics and scholars claimed that the common threads among Hitchcock's movies do not result from the unique metaphysical concerns of their director, but instead represent fundamental patterns common to all films and indeed all minds.<sup>135</sup>

By this analysis, the Hitchcockian theme of guilt transfer parallels the Freudian concept of transference by which emotions associated with one person unconsciously shift to another. The protagonists of

129. See Denvir, *supra* note 29, at xiii; John Hasnas, *Back to the Future: From Critical Legal Studies Forward to Legal Realism, or How Not To Miss the Point of the Indeterminacy Argument*, 45 DUKE L. J. 84, 85-98 (1995); see also Jeffrey L. Harrison & Amy R. Mashburn, *Jean-Luc Godard and Critical Legal Studies (Because We Need the Eggs)*, 87 MICH. L. REV. 1924 (1989) (comparing Critical Legal Studies with Godard's attempts as filmmaker to dethrone artistic positivism by exposing arbitrariness and indeterminacy of cinematic choices).

130. CHARLES A. BEARD, *AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES* (1935) (originally published in 1913).

131. See, e.g., RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* (1977); see also Robert D. Tollison, *Public Choice and Legislation*, 74 VA. L. REV. 339 (1988) (describing public choice theory that legislation results from legislators' service of private, rent-seeking interest groups).

132. Compare, e.g., MOLLY HASKELL, *FROM REVERENCE TO RAPE: THE TREATMENT OF WOMEN IN THE MOVIES* (1974), and DONALD BOGLE, *TOMS, COONS, MULATTOES, MAMMIES AND BUCKS: AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILMS* (1991), with *FEMINIST LEGAL THEORY* (Frances E. Olsen ed., 1995), and Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893.

133. See BORDWELL, *supra* note 78, at 88-93.

134. Denvir, *supra* note 29, at xiii.

135. See BORDWELL, *supra* note 78, at 89-93.

Hitchcock's films, while innocent as to action, are guilty as to desire.<sup>136</sup> As Freud wrote, "It is a matter of indifference who actually committed the crime; psychology is only concerned to know who desired it emotionally and who welcomed it when it was done."<sup>137</sup> For example, in *The Paradine Case*, the noble barrister Anthony Keane did not meet Mrs. Paradine until after her husband's murder, but in retrospect, he relished the old man's elimination as a rival for the woman's attentions. In *I Confess*, Father Logan accepts blame for a murder he did not commit but cannot fully regret: The murdered lawyer was blackmailing Logan's former love by threatening to reveal she had an affair with Logan before he entered the priesthood. In *The Wrong Man*, Manny Balestrero knows he did not commit any robberies, but realizes he was capable of doing so. Indeed, at the time he was mistakenly implicated in the crimes, he was searching for a way to make extra money to pay for dental treatment for his wife.

Psychoanalytic interpretations of Hitchcock's movies focus most intensely on issues of sex and gender. In an immensely influential essay, Laura Mulvey asserts that all classical narrative films—meaning all Hitchcock movies and virtually all Hollywood pictures—employ the point of view of an idealized male spectator.<sup>138</sup> Women, the passive objects of this cinematic gaze, represent an absence which valorizes the phallus while simultaneously arousing the viewer's fear of castration. To provide pleasure, films must deny the woman's threat and alleviate the castration anxiety while maintaining the patriarchal point of view. They accomplish this by means of an obsessive investigation of the female form—voyeurism—and a building up of the beauty of the female object to compensate for her lack—fetishism.<sup>139</sup>

The psychoanalytic approach provides a theory not only about what Hitchcock's courtroom dramas mean, but also why they were among his least successful films. A psychoanalytic critic would argue that the movies enjoyed little popular or critical fortune because they failed to generate pleasure through the customary psychological

136. See Renata Salecl, *The Right Man and the Wrong Woman*, in *EVERYTHING*, *supra* note 128, at 185, 187.

137. Sigmund Freud, *Dostoevsky and Parricide*, in 5 *COLLECTED PAPERS* 222, 236 (James Strachey ed., 1959); see also THEODORE PRICE, *HITCHCOCK AND HOMOSEXUALITY* 266 (1992) (suggesting recurrence of wrongly-accused men in Hitchcock's films, such as in *I Confess* and *The Wrong Man*, reflects fear of having one's wish-participation in Oedipal crimes revealed).

138. See Laura Mulvey, *Visual Pleasure and Narrative Cinema*, *SCREEN*, Autumn 1975, at 6.

139. Later analyses challenged Mulvey's argument that movies offer women only masochistic pleasure through adoption of the male spectatorial position. See TERESA DE LAURETIS, *ALICE DOESN'T: FEMINISM, SEMIOTICS, CINEMA* (1984) (arguing that female spectators identify with both active, desiring male subjects and passive, fetishized female objects); MODLESKI, *supra* note 69, at 2-15 (arguing that movies incorporate both male and female Oedipal trajectories and permit some expression of specifically female desires).

mechanisms. One writer claims, for example, that *The Paradine Case* is "populated almost exclusively by castrated males."<sup>140</sup> The protagonist, Anthony Keane, is supposed to be a renowned, gifted barrister. He appears instead as an ineffectual lawyer and an immature man easily wrapped around the finger of his seductive client, who not only admits her guilt but emasculates her lawyer. After she publicly reveals Keane's love for her, Keane can only mumble an apology and walk out of the courtroom in shame. His abasement continues in the movie's denouement as he meekly begs for and receives his wife's forgiveness. The film's depiction of its male characters' weakness corresponds to its representation of law's deficiencies and corruptions. The justice system, a masculine construction serving to preserve patriarchal law and control, "inevitably shares in the general impotence of its several human representatives" in the film.<sup>141</sup>

In the psychoanalytic perspective, the Hitchcock films' indictment of legal systems stems not from the director's intentions but from the fundamental structure of the human subconscious. A variety of feminist, ideological, and other structural interpretations can and have been offered for Hitchcock's movies.<sup>142</sup> As in the case of psychoanalytic criticism, the interpretations assigned to movies can never be divorced from the interpretive method applied.

### E. Realism

In *Reel Justice*, Bergman and Asimow illustrate still another approach to analyzing the meaning, quality, and significance of movies. They focus on the degree to which movies accurately depict reality, specifically how accurately they portray legal rules and practice. *Reel Justice* discusses separately each of the three Hitchcock courtroom movies, and Bergman and Asimow determine that legal inaccuracies diminish their merit. As in most of the essays in *Legal Reelism*, the interpretive approach in *Reel Justice* is not explicitly analyzed or defended. This failure to explain the significance of cinematic realism becomes the book's principal shortcoming. Bergman and Asimow represent the legal subspecies of what Truffaut and Hitchcock called "our friends, the

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140. Michael Anderegg, *Hitchcock's The Paradine Case and Filmic Unpleasure*, CINEMA J., Summer 1987, at 49, 51; see also *id.* at 53 (describing Hitchcock's other law-related films, including *I Confess* and *The Wrong Man*, as unpleasurable to some degree).

141. *Id.* at 53-54.

142. For recent analysis of Hitchcock's films from the perspective of "queer theory," combining elements of auteurist, semiotic, Marxist, feminist, and psychoanalytic approaches, see the essays by Alexander Doty, John Hepworth, Robin Wood, Sabrina Barton, Rhona J. Berenstein, and Lucretia Knapp collected in *Dossier on Hitchcock*, in OUT IN CULTURE, *supra* note 67, at 183-281.

plausibilists," who insist on realism for realism's own sake.<sup>143</sup> The degree to which the Hitchcock movies adhere to legal reality is, by itself, of limited interest. They are movies—entertainment and art—and not continuing legal education tutorials. As one critic wrote of *The Wrong Man*, "[a]lthough truth is often stranger than fiction, it doesn't necessarily make a better movie."<sup>144</sup> The realistic and unrealistic aspects of the movies become worthy of attention, however, to the extent they mark critical aspects or meanings of the films. The moments when a movie lawyer departs from the expected and familiar course of behavior, or when legal proceedings take an improbable or even implausible turn, may often reveal what made the movie's characters and story seem worth filming in the first place.<sup>145</sup>

Bergman and Asimow never explain exactly how Hitchcock's or so many other courtroom movies came to depart from legal reality. Examination of Hitchcock's films and their production history suggests that their legally unrealistic or implausible elements are due neither to ignorance nor to apathy. Hitchcock was obsessed with realistically portraying the legal system. As a boy, he wanted to be a barrister, and spent his free time watching murder trials at Old Bailey Court.<sup>146</sup> For *The Paradine Case*, he returned to London, engaged a prominent wig and robe maker, attended sessions at Old Bailey, and demanded construction of an exact replica of that famous courtroom.<sup>147</sup> He hired technical consultants to advise him and his cast and crew on matters as peripheral as the demeanor of the police when booking a suspect.<sup>148</sup> Where legal accuracy conflicted with dramatic needs, Hitchcock sometimes sacrificed the latter. Because English court conventions kept the barristers at their seats throughout the trial proceedings, Hitchcock resorted to montage techniques to break the visual tedium.<sup>149</sup> Hitchcock also felt that his leading man, Gregory Peck, whom producer David Selznick cast over Hitchcock's objections, was too young and too

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143. TRUFFAUT, *supra* note 100, at 121, 203; *see also id.* at 102 (Hitchcock: "A critic who talks to me about plausibility is a dull fellow.").

144. Philip T. Hartung, *It Can Happen Here*, 65 THE COMMONWEAL 434, 434 (1957).

145. For example, Bergman and Asimow consider . . . AND JUSTICE FOR ALL, *supra* note 18, one of the two worst films included in their book. In the movie's climactic scene, a defense lawyer played by Al Pacino explodes during his opening statement and announces that his client is guilty of the brutal rape for which he stands trial. Bergman and Asimow declare that this "could never happen." REEL JUSTICE, *supra* note 1, at 111. They fail to recognize that the entire point of the scene is that the lawyer's action is aberrational. He does what lawyers do not do. The movie contends that the criminal justice system is irrational but the participants in it—particularly lawyers—continue to do their jobs without questioning or even recognizing the insanity. Al Pacino's character is the one lawyer—the "unrealistic" exception—who cannot stand to play his role anymore.

146. *See* LEFF, *supra* note 111, at 227; SPOTO, *supra* note 85, at 32.

147. *See* LEFF, *supra* note 111, at 235.

148. *See id.* at 239.

149. *See id.* at 258.

American to portray a distinguished English barrister. Hitchcock wanted to Anglicize the actor with a mustache, but nixed that idea and settled for graying Peck's hair upon learning that all barristers are clean-shaven.<sup>150</sup> Hitchcock likewise engaged experts for *I Confess* to ensure realistic depictions of police and ecclesiastical functions in Quebec.<sup>151</sup>

For *The Wrong Man*, Hitchcock went to even greater lengths to recreate Manny Balestrero's story in accurate detail. Hitchcock flew to Florida to meet Balestrero's family, arranged meetings in New York with the judge and defense attorney from Balestrero's case, and filmed the movie in the very same courtrooms, jail cells, subway stations, liquor stores, and delicatessens in which the real events transpired. To the extent possible, he employed in minor roles the detectives, witnesses, and other participants in the real case.<sup>152</sup> Hitchcock's obsession with accuracy extended to indulging arguments over differing witness recollection of the position of a counsel table.<sup>153</sup> He even sent actress Vera Miles to purchase her wardrobe at the same thrift shop where Balestrero's wife shopped, and made Henry Fonda learn to play Balestrero's instrument, the bass violin.<sup>154</sup>

Bergman and Asimow, however, find troubling mistakes and implausibilities in these films. They give low marks—only two gavels—to *The Paradine Case*, finding critical errors in Keane's handling of the case.<sup>155</sup> They point out that Keane blunders by falling in love with his client and thereby losing his objectivity. Keane's other errors stem from that crucial mistake: He assures his client that he will win her case, improperly disregards her wishes as to defense strategy, and unwisely calls her to testify. But the "flaws" identified by Bergman and Asimow are the whole point of the movie. *The Paradine Case* is the story of a great lawyer's degradation.<sup>156</sup> If Keane had behaved properly and remained emotionally detached from his client, the movie would have attained all the dramatic intensity of a legal ethics textbook.

*I Confess* receives criticism from Bergman and Asimow as well. They contend that the movie exaggerates the impact of the priest-penitent privilege. While Father Logan could not properly testify about

150. See SPOTO, *supra* note 85, at 298.

151. See Jean-Claude Marineau, *Hitchcock's Quebec Shoot*, CINEMA CANADA, Mar. 1985, at 18.

152. See PHILLIPS, *supra* note 74, at 133; SPOTO, *supra* note 85, at 377-78; TRUFFAUT, *supra* note 100, at 237-39.

153. See Milton Esterow, *All Around the Town with 'The Wrong Man': Hitchcock Troupe Shoots New Thriller at Surface and Underground Sites*, N.Y. TIMES, Apr. 29, 1956, § 2, at 7.

154. *Court Is Turned into a Movie Set*, N.Y. TIMES, Apr. 9, 1956, at 21.

155. See REEL JUSTICE, *supra* note 1, at 181-83.

156. See TRUFFAUT, *supra* note 100, at 173 (Hitchcock: "After all, the story of *The Paradine Case* is about the degradation of a gentleman who becomes enamored of his client . . .").

the content of the murderer's confession, Bergman and Asimow point out that the rules of evidence allowed him to testify about all observations preceding the confession. If Father Logan had explained how on the night of the murder a shadowy figure hurried into the church and requested to make confession, Bergman and Asimow suggest he never would have stood trial for the crime.<sup>157</sup> Bergman and Asimow once again overvalue accurate portrayal of legal reality. As the French critics of the 1950s explained: "It has been charged that the story is improbable. Couldn't Father [Logan] find some expedient? We can only be certain that he doesn't *want* to."<sup>158</sup> Serving as a martyr who accepts punishment for another's sins, and identified with Christ throughout the picture, Father Logan does not search for a way to get off the cross. He does not try to absolve himself because, like everyone in Hitchcock's universe, he understands he is guilty on some level, guilty at least of giving in to the lure of martyrdom.<sup>159</sup> As the killer dies in Father Logan's arms in the film's finale, he tells the priest: "You are as guilty as I."<sup>160</sup> Father Logan cannot disagree. The implausibilities that Bergman and Asimow see in *The Paradine Case* and *I Confess* thus mark what can be considered their fundamental subjects: the degradation of a proud lawyer and gentleman, and the self-martyrdom of a man imitating Christ.

Bergman and Asimow consider *The Wrong Man* the best of Hitchcock's trio of courtroom dramas, awarding it "three gavels" and praising its gritty, documentary-style depiction of criminal law procedure.<sup>161</sup> They do not make clear how the movie's accurate depiction of legal rules and practices makes it more entertaining, more interesting, or more important. In fact, *The Wrong Man* can be interpreted as a critique of faith in its own brand of superficial realism. *The Wrong Man's* story, although true, involves considerable improbabilities and is almost

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157. See REEL JUSTICE, *supra* note 1, at 209.

158. ROHMER & CHABROL, *supra* note 84, at 116; see also Truffaut, *Skeleton Keys*, *supra* note 84, at 66 (contending Father Logan is more guilty than the killer, who acted in self-defense when surprised during a burglary, because Father Logan had a motive to kill the victim, a lawyer who was blackmailing Logan's former love).

159. See PHILLIPS, *supra* note 74, at 131-33; ROHMER & CHABROL, *supra* note 84, at 116; see also TRUFFAUT, *supra* note 100, at 203 (Hitchcock: "Any priest who receives the confession of any killer becomes an accessory after the fact."). Asked whether Father Logan was tempted by martyrdom, Hitchcock acknowledged "Yes, he was tempted by the idea. Of course, in the end, he was a martyr." BOGDANOVICH, *supra* note 113, at 519.

160. Likewise, on some level the real killer wants Father Logan to condemn him by betraying the sanctity of the confessional. He tells Father Logan repeatedly that Logan will not be able to keep the secret. The men fight to claim the guilt which they mistakenly fear only one can ultimately bear. See Mark W. Roche, *Hitchcock and the Transcendence of Tragedy: I Confess as Speculative Art*, *Post Script*, Summer 1991, at 30, 33.

161. See REEL JUSTICE, *supra* note 1, at 226-28.

in the nature of a fable.<sup>162</sup> The conspiracy of events against Balestrero is unrelenting, from his coincidental repetition in a handwriting sample of a spelling mistake made by the robber, to the chance deaths of his only two alibi witnesses.<sup>163</sup> Balestrero recognizes it is "like somebody was stacking the cards against us." The events that finally save Balestrero from conviction are equally improbable. He is rescued by what Hitchcock depicts as a miracle: A juror's impromptu outburst triggers a mistrial and then, just as Balestrero prays for help, the real thief is captured.

Jean-Luc Godard described *The Wrong Man* as a movie about the primordial role of chance, quoting Aristotle's observation that "it is probable that many things happen against probability."<sup>164</sup> By investing his pseudo-documentary with substantial cinematic gimmickry and artifice, Hitchcock layers over his overt message—that what you see in *The Wrong Man* is real—with contradictory subtext—that appearances deceive and even ostensibly true images are lies.<sup>165</sup> As a meditation on the falseness of "realistic" cinema, *The Wrong Man* becomes an odd object for Bergman's and Asimow's reality-minded praise.

#### F. Lawyers, Law, and Movies

This discussion of Hitchcock's films suggests several fundamental observations about the idea of treating movies as legal texts and studying their reflections of lawyers and law. Movies raise the same basic kinds of questions as conventional legal texts. In analyzing a statute, for example, one might ask positive questions about the statute's content or effect, normative questions about the justice or wisdom of the enactment, and theoretical questions about the principles underlying the law. *Reel Justice* emphasizes questions of the first sort, describing cinematic depictions of legal institutions, practices, and doctrines and analyzing how closely those depictions adhere to legal reality. The essays in *Legal Reelism* focus on the latter types of questions. In the case of

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162. See ROHMER & CHABROL, *supra* note 84, at 148 ("Of all Hitchcock's films this is certainly the least dependent on fiction, but at the same time it is the most unbelievable."). Hitchcock was not happy with *The Wrong Man* and thought it should have been either more or less realistic than it was. Compare BOGDANOVICH, *supra* note 99, at 38 (Hitchcock: "In truth, perhaps, *The Wrong Man* should have been done as a documentary, without any cinematic consciousness . . ."), with TRUFFAUT, *supra* note 100, at 240 (Hitchcock: "It's possible I was too concerned with veracity to take sufficient dramatic license.").

163. See Don Ross, *Alfred Hitchcock, A Very Crafty Fellow*, N.Y. HERALD-TRIBUNE, Mar. 4, 1956, § 4, at 3 (Hitchcock: "If we had been doing a fiction story, we wouldn't have had *two* dying off . . . It would have looked phony.").

164. GODARD, *supra* note 84, at 53.

165. See Marshall Deutelbaum, *Finding the Right Man in The Wrong Man*, in A HITCHCOCK READER, *supra* note 95, at 207; cf. Sherwin, *supra* note 43, at 76-77 (noting use of same tactic in Errol Morris' documentary *THE THIN BLUE LINE* (Miramax 1988) and describing it as essence of post-modernism).

Hitchcock's movies, the potential questions range from the legal ethics issues presented by *The Paradine Case*, to the merits of the priest-penitent privilege invoked in *I Confess*, to the role of fate or providence in law as suggested by *The Wrong Man*.

No matter which type of questions one asks, forming answers requires interpretation. Like statutes and other conventional legal materials, movies have been subjected to a variety of intentionalist, textualist, structuralist, and other interpretive approaches. The fundamental similarity of issues surrounding interpretation in film and legal studies underscores that movies truly can be considered legal texts, as *Legal Reelism* suggests. At the same time, they also present their own unique challenges, no less important or difficult than those presented by the interpretation of more conventional legal texts.

Recognizing the parallels between film and traditional legal interpretation also reinforces how the distance between law and other realms of scholarship and culture should not be overestimated. The interdisciplinary links undermine the assumption that legal interpretation has a uniquely and fundamentally greater objective character than other forms of exegesis such as film interpretation. Likewise, the recognized boundaries of what constitutes "law" expand if movies and other aspects of popular culture can properly be regarded as legal texts and their study accepted as a matter of substantial concern to legal historians and theorists. The legal field encompasses matters not previously recognized as residing within its embrace, but which have long played an unexamined role in reflecting and helping to form understandings about lawyers, legal institutions, practices, and principles.

#### IV

#### CONCLUSION

*Reel Justice* and *Legal Reelism* represent valuable initial steps in the consideration of how movies and other elements of popular culture reflect the cultural positions of lawyers and law, and how their study can aid discussion of issues of legal theory. Shortcomings are inevitable, given the inability of any two books to canvass fully such a broad and largely unexplored terrain.

The recent increase in legal scholarship on movies and other aspects of popular culture is long overdue. Movies and television have served as the primary source of information about law and lawyers for millions of people over the years, and they will continue to do so. Popular entertainment has also continually influenced lawyers' understandings and attitudes toward law and the legal profession. *Reel Justice* and *Legal Reelism* should serve as powerful encouragement to further study along these neglected paths.