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Lawyers Not in Love

The Defenders and Sixties TV

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This essay offers a social history and examination of *The Defenders* as a popular, critically acclaimed television text that negotiated anxieties regarding crime, law, justice, liberalism, and masculinity in the 1960s and 1990s. Both *The Defenders* television series (1961–1965) and the Showtime motion picture series (1997–1998) by the same name rearticulated enduring tensions between law’s formalism and just desires for compassion and mercy, depicting defense attorneys as men who work both inside and outside of “law” to ensure justice and confront the lack of humanism in “the rule of law.” Such discourses are understood and appreciated in different ways in different times, particularly as the cultural politics of nostalgia are engaged. *The Defenders* offers clear illustrations of the ways in which popular narratives not only depict juridical roles but also perform them, specifying when and where “law” begins and ends.

Keywords: television drama; lawyers; crime; justice; sixties

Century City, set in the year 2030 in Los Angeles, premiered in the spring 2004 prime-time schedule, promising viewers a legal drama envisioned in the far-off future. The future of the series, however, was short. CBS canceled it after four weeks of middling ratings, but not before it piqued the interest of scholars examining the intersections of popular television and law. For example, Paul Bergman, writing for the journal *Picturing Justice*, noted that *Century City*’s premiere episode had “roots [that] can stretch all the way back to *The Defenders*.” Furthermore, he remarked, “watching capable lawyers battle over a public policy issue . . . was refreshing in an era when lawyer shows tend to resemble either soap operas or paperback mysteries” (2004, 1).

Such a hailing of the sixties television series *The Defenders* as the hallmark of quality legal drama is commonplace. Contemporary television scholars and critics such as Bergman routinely point to and praise the

program's address of controversial public policy issues by "hero-statesman" attorneys that eschewed the melodramatic and struggled with the limitations of law and legal institutions. The program won thirteen Emmys during its four-year prime-time run, and for these reasons, among others, it is rare to find a scholarly survey of prime-time television lawyers that fails to at least briefly praise the sixties series, if not call explicitly for its revival.

And revived it was. More than thirty-two years after it left American television, *The Defenders* returned briefly to legal practice on the small screen. *The Defenders* first aired on CBS from 1961–1965 and was remade into a short series of three Showtime motion pictures during the 1997–1998 seasons.¹ Legal patriarch Lawrence Preston, the embodiment of the distinguished, principled criminal defense advocate, was brought back to life one final time shortly before actor E. G. Marshall's 1998 death and was quickly embraced by critics who watched the new productions through prisms of popular memories and nostalgia regarding a televisual father and son and the administration of justice.

In a "prime-time law" world dominated by the programs and spin-offs of *Law & Order*, *NYPD Blue*, and *COPS*, and in the wake of "O. J.," Showtime executive producer Stan Rogow realized he was cutting across the programming grain as he pitched *The Defenders* remake in the late nineties—and received no broadcast network interest. As *Los Angeles Times* television critic Howard Rosenberg explained, the broadcasters passed "because it was about a defense lawyer . . . [and] it was the network's perception that the public wanted to see shows about people behind bars. . . . Still in [network] minds were the O.J. Simpson case and lingering public attitudes about the law and defense attorneys" (Rosenberg 1997, F14).

Rosenberg's explanation and assessment of the major networks and producers as predominately aligned with the discourses of the prosecutorial state finds support in recent scholarly literature. Timothy Lenz (2003) and Elaine Rapping (2003) have argued that even in a prime-time world that includes some sympathetic defense attorneys (e.g., *The Practice*, *Matlock*, *Murder One*), the conservative backlash against "crime" has been prominently reproduced in popular television fare and representations of attorneys, law, and order. In Rapping's *Law and Order as Seen on TV*, she underlines the public and network sentiment described by Rosenberg, arguing that an embrace of the prosecutorial state and the increasing criminalization of American life have marked the past two decades in the United States.

So, in this social and cultural context, why was the late-nineties revival of *The Defenders* met with grand praise by many of the nation's prominent television critics? I argue that the answer is found in address of a more

fundamental query: how did the short series of Showtime motion pictures as well as the original series take up and negotiate specific historical concerns regarding crime, law, and order within established discourses of legal liberalism and masculinity?

Approaching both the sixties TV show and the Showtime movies as partial and popular engagements with larger social concerns, this essay offers a social history and examination of these cultural productions as popular mediators of anxieties regarding criminal justice, male power, and the enduring opposition between law and justice. As critical scholars have shown, the relationship of law to justice—the opposition of law’s formalism to just desires for human compassion and mercy—persists as a problem central to legal liberalism and everyday legal practice.² Mark Tushnet writes that this opposition is “a persistent trope in the discourse on law” and further explains that the regulation “by rules not men” celebrated within legal liberalism has a “rigidity [which] must be tempered from the outside, by mercy and a case-specific particularism associated with justice” (1996, 244).

In this article, I will show how *The Defenders*, in the 1960s and 1990s, takes up this tension within specific social and national contexts, representing virtuous defense attorneys as men who work both inside and outside of “law” to ensure justice. The hero-statesman defense lawyers in *The Defenders* are moderns—coded as rational, precise, and manly (Epstein 1998a). Yet, they are powerfully hailed by the demands of justice—to a degree that frequently requires that they be representatives of justice rather than law, marked by a moral character and wisdom pertaining to the public sphere that requires heroic actors to act “outside” of law. As I demonstrate, such “outsider” discourses are understood and appreciated in different ways in different times as the cultural politics of nostalgia are used.

The Defenders is one of a vast number of popular texts that can be clearly seen, in a Foucaultian sense, as regulatory—as part of the complex of regulation and governmentality that marks the modern era—representing knowledges that culturally police “both law’s own boundaries and the limits and contours of other discourses” at their moments of articulation (Redhead 1995, 10). *The Defenders* is but part of a larger body of popular narratives that not only depict juridical roles but also perform them, specifying when and where “law” begins and ends.

As has been made even more clear in recent years within the debates articulating national or international law and its relationship to the U.S. “war on terrorism,” legal boundaries are less “commonsensical” than fundamentally social, political, and cultural—constantly reproduced and renegotiated within the spaces of social life. Thus, rather than assuming a conventional view of law as holding an a priori hierarchical authority over other forms of social ordering, this study espouses the idea that law,

rather than unitary and socially autonomous in character, only exists in its moments of social construction and articulation as one of many, often popular, regulatory forms.

Law and Disorder

Given the prominence of current “law and order” fare in both fiction and nonfiction genres and its focus on the agents of the prosecutorial state, it is easily forgotten that prime-time law and order has not always taken its present televisual appearance. When *The Defenders* premiered during the early sixties, watching honorable lawyers on television was, in most cases, witnessing noble defense attorneys outsmart and outargue prosecutors while claiming the high moral ground. Of fourteen major-network courtroom dramas aired during the 1960s, prosecuting attorney characters were featured in only two short-lived series.³ Meanwhile, defense lawyers were the protagonists in fully half of these projects, including *Sam Benedict*, *The Law and Mr. Jones*, *Perry Mason*, and *The Defenders* (Winick and Winick 1974, 72).⁴ These popular dramas regularly called attention to the “rights” or innocence of the accused and recirculated public skepticism about police behavior and prosecutorial competence (Stark 1987).

The most popular of these dramas, *Perry Mason*, successfully used spaces of law as settings for murder mysteries in which Mason virtually always showed police and prosecutors to be wrong (Bounds 1996).⁵ *The Defenders*, starring E. G. Marshall and Robert Reed as Lawrence and Kenneth Preston, a father-son defense attorney team, began airing on September 16, 1961, following *Mason* on the CBS Saturday night prime-time schedule. In contrast to *Mason*, *The Defenders* featured attorneys who rigorously scrutinized their own tactics, occasionally lost verdicts, and quickly received praise for their “realism” in contrast with *Mason*’s “legalistic fandango” (Television Review 1961). As one *TV Guide* critic summarized, “even when [the Prestons] do lose, they somehow seem to have won” (Amory 1964, 3).

Airing weekly over four seasons, the program won consistent critical acclaim and a popular following, leaving its mark on the genre of televisual drama. The series often broke into the top ten during the 1961 season, averaging a 35.9 share (Alvey 1995, 216). During the 1962 season, the program again rated highly, averaging a ranking within evening television’s top twenty and enjoying brief tenure again as a top-ten show (Museum of Broadcasting 1985; Brooks and Marsh 1992).⁶ In the same year, *Television* magazine declared the series the season’s “surprise hit” and argued that the program gave crucial impetus to a broader shift in network program form “from the contemporary action-adventure format

to people-drama shows” (Gelman 1962, 86). As historian Mark Alvey has observed, the telefilm series led the way for a “spate of social issue dramas singularly resonant with New Frontier liberalism” (1995, 201).

For most critics, past and present, what was remarkable about the series was the ways in which it went straight at vexing, controversial social issues including abortion, parental rights, euthanasia, civil disobedience, capital punishment, and prosecution of the mentally ill. The producers also declared an intention to sharply focus on the legal process itself. The series creator and chief writer, Reginald Rose, declared in a 1964 article, “The law is the subject of our programs – not crime, not mystery, not the courtroom for its own sake” (p. 21). The morality, character, and construction of American legal procedure and process as well as its interaction with social issues such as “rising crime” was the substantive touchstone for the *Defenders*’ creative team (Alvey 1995).

But even in this favorable climate for lawyer characters, the program that has been hailed as “the jewel of New Frontier character dramas” was not greeted with quick network enthusiasm (Watson 1990, 43). Its “too serious” anthology-like tone and style made it suspect in the eyes of network programmers. The show, filmed in New York after most television production had moved to Los Angeles, was relatively cheap to produce and had an impressive staff drawn from the ranks of 1950s television anthology. But when *The Defenders* was first offered to CBS in 1960, the president of the network, Jim Aubrey, was reportedly put off by the show’s intense focus on dialogue and cerebral investigation of moral issues. Ernest Kinoy, one of the first and most regular writers for the series, recalls Aubrey’s inviting several of the program’s principals to a posh New York restaurant, and during the course of a sumptuous meal, dressing them down, exclaiming at one point, “I wanted Perry Mason, and instead you give me this garbage” (Watson 1990, 43; Museum of Broadcasting 1985). Thus, CBS declined to pick up the program until 1961, when the network, feeling pressure from staff cutbacks and the governmental push for quality “public interest” programming, took *The Defenders* off the shelf to fill an empty programming slot (Curtin 1995, 71; Museum of Broadcasting 1985).⁷

While audiences faithfully tuned to *Perry Mason* and *The Defenders* during sixties prime time, the nightly flow of television news programming also transmitted images of increasing unrest and crime. From all popular accounts, crime was on the rise – dramatically. Official records reported a jump “in the total volume of crime,” subsequently tallied at 203 percent between 1960 and 1974 (Walker 1980, 228). Television journalism took up “growing crime” as an important topic. Documentary programming on the networks’ three “flagship” documentary series (including NBC’s *White Paper* and CBS *Reports*) focused on concerns about the law, courts,

or crime in more than a dozen reports between 1961 and 1964 (Curtin 1995, 41). Other “criminal problems” prominent in the forties and fifties, such as juvenile delinquency and the spread of a “morally corrupting” communism, also lingered. National politicians and cultural institutions attempted to address these popular anxieties while speaking of crises in law. From the White House, Presidents Kennedy and Johnson attempted to allay widespread fears by establishing special presidential commissions on crime and law enforcement in 1961 and 1965. And the Senate Judiciary Committee’s Subcommittee on Juvenile Delinquency, chaired by Thomas Dodd, stirred extraordinary attention and journalistic coverage during the early sixties as it linked the problem of youth violence to television and popular culture (Boddy 1996).

Studies have suggested that the fear of crime voiced among the middle class during the decade was, not unlike similar fears today, a rather amorphous, wide-ranging anxiety connected to concerns not only about violence and property loss but social power and displacement. By this historical reading, fear of crime referred less precisely to fear of actual victimization than to anxiety regarding changing social, especially race, relations (Furstenburg 1971). Civil rights marches, student protests, and Vietnam war resistance drew wide middle-class attention, raising worries about the condition of American “law and order” as well as law enforcement’s abilities to respect emerging civil rights while suppressing other types of “criminality” (Walker 1980, 201–2, 222; Friedman 1993, 449). Egregious state and local reactions to rights expression and activism, often televised nationally, not only encouraged federal intervention but also fueled a growing rights discourse and portended further change.

In this environment, Americans were deeply divided over how crime should be addressed (Friedman 1993). Alongside official reports of increasing crime, stories of officer abuse and brutality received further circulation. Staunch “law and order” militaristic responses by law enforcement were blamed for gravely wounding nonviolent rights efforts, while emphases on further establishment and protection of individual rights were criticized as handcuffing effective policing and discipline. Many agreed that legal institutions and practices must change and adapt—the question was how.

According to criminal-justice historians, two popular answers to this “crisis” stood in stark juxtaposition—one emphasizing increasing police power via professionalization and technology to thwart crime, the other drawing from civil rights interventions, articulating the importance of increasing the power and formal rights of those accused and marginalized by law enforcement. These different paths have subsequently been referred to as the “crime control” and “due process” models (Friedman 1993; Hall 1989; Walker 1980).

Perhaps the best-known example of the crime-control philosophy was Los Angeles chief of police William Parker—a study in authoritarian administration, “tough on crime” rhetoric, and aggressive police tactics. The chief served as an inspirational character for TV’s *Dragnet*—a prime-time depiction of the Los Angeles Police Department (LAPD) ideal of emotionless and efficient crime fighting. Using coordinated motorized patrols and a sophisticated radio communications network, the LAPD represented an effort to wage a “war on crime” using new technologies and an impersonal professionalism, assuming that increasing police power was the best address of criminality.

But as the “crisis” of crime grew, the crime-control model was itself in crisis. The movement for individual civil rights, unintentionally aided by law enforcement backlash against such activity, set the stage for what some called the “due process revolution.” Televised reports from cities such as Birmingham, Alabama, and later, Los Angeles revealed more fully the relationship of increased police power to racist brutality. Crime-control militarism, while neat and efficient in the abstract, was messy in practice, greatly aggravating race relations (Walker 1980). In contrast, the due-process model, articulated by federal institutions, stressed new individual rights—more precisely, procedural regularity—as a limit on the discretionary powers of criminal-justice officials, as a protection for emerging individual liberties, and as a guide to social, and specifically racial, justice. A procedural orientation to criminal justice dovetailed with emerging discourses of individual rights and racial justice (Peller 1993).

Empowered by reinvigorated discourses of legal liberalism, the due-process approach to crises in law and order claimed to bring about greater justice through reliance on dispassionate, “neutral” legal processes, professional expertise, and judicial power. Legal liberalism’s familiar claim that we should live by “the rule of law, not men” was of a piece with a pattern of practices reflecting belief in the existence, value, and necessity of neutral, objective forms of language and procedure (Streeter 1990). The due-process approach was to provide not only neutral mechanisms for the procedures of law but experts capable of operating these mechanisms impersonally.

As legal scholar Gary Peller has shown, American criminal jurisprudence since the 1940s has been marked by such an emphasis on legal professionalism and a distinguishing of procedural from substantive issues. These discourses have been accompanied by assertions that “procedural issues could be answered neutrally and objectively even if substantive issues could not.” In this way, and in contradistinction to the explicitly political actions of elected politicians, the actions within the province of the judiciary—and the institutional competence of the courts—could be seen as expert, process-focused, and nonpolitical (Peller 1993, 2239–44).

While this practical proceduralism was in part directed toward protection of individualized liberties, it also represented an attempted defense of liberal beliefs against potentially “disordering” ideas regarding an unmanageable subjectivity and indeterminacy in legal processes. Facing such disruptive potentials, due-process advocates claimed the necessity of “blindness” to considerations of race, gender, and other social markers in the practices of the police and courts and invested their trust in the expertise of a largely white and male professional class – attorneys – to monitor and guard against stray subjectivities. Not just anyone could be entrusted with law’s procedures. Particular professionals were needed.

The Legerdemain of Lawyers

While another professional class – television critics – made comments regarding *The Defenders* that were predominately positive, it became clear that their evaluations circulated disparate readings of the program connected to different conceptions of criminal law. On one hand, some were quick to note how the series depicted law as a force that was rightly allowed sovereignty and “final say” in the series. These critics praised the program for depicting ways human subjectivity was held subordinate to the authority of legal texts and judges who claimed a measure of autonomy from such subjectivities. Within this view, what was of merit in *The Defenders*, in terms of both values and “realism,” was the final, if troubled, deference of the series narratives to the authority of an orderly, stable set of principles and rules – liberal legalism’s “rule of law.” From this perspective, Edith Efron, arguably *TV Guide*’s most influential writer during the sixties, lauded the series, attributing its success primarily to clear conclusions dictated by determinate letters of law rather than crafty professional strategies and interpretation. For example, in a 1962 article, she wrote, “Perhaps most significant of all where ratings are concerned is the fact that the law, as it exists today, has the last word in *The Defenders*. The viewers remain secure in their knowledge that, before the hour is up, justice will triumph over the procession of high-minded lawbreakers and murderers. In the universe of Reginald Rose, good intentions still pave the road – if not to hell – to jail” (p. 9).

In Efron’s evaluation, the series was important and popular for its affirmation of a key liberal trust in “the rule of law not men.” From this perspective, despite the show’s questionings, such a rational foundation was highlighted by the show creators, trumping crafty criminals and lawyering, and had been appropriately rewarded in ratings. The audience had spoken and confirmed its appreciation for the security of a knowable law, triumphant over the sophistry of “high-minded” lawyers and criminals.

But, as Efron acknowledged, other critics and industry insiders had also applauded episodes precisely for their lack of closure and legal resolution. What other critics had seen was a fiction's thoughtful exploration of law's contemporary limitations. In 1964, for example, Daniel Greene of the *National Observer* wrote an article observing that "when the show tackles a highly flammable subject, the central conflict is usually left unresolved" (p. 16). To support this point, Greene referred to at least one episode in which interesting juridical issues were raised regarding civil disobedience, only to have the show end with Lawrence Preston's winning not on his legally substantive arguments or moral appeals but on a procedural technicality. In this case, law's "last word" could be understood as offering little more than technical processes, lacking substantive vision but nevertheless instrumental within the right hands. The argument that Greene offered is that while the series depicted law as having the "last say" technically, viewer pleasure came less from declaration of law's substantive vision or autonomous nature than from popular engagement with the professional, lawyerly dialogue regarding law's consistent adaptation, movement, and improvement.

In these ways, the series was simultaneously praised as depicting the stability and sovereignty of official texts and lauded as a representation of law's adaptability and sensitivity to its situatedness within a particular place and time. In either case, the critics' praise explicitly defined the Prestons as lawyers wise to the dynamics and tensions within legal liberalism — those with the extraordinary expertise and trained insight capable of negotiating these problematic law-justice frictions.

Not surprisingly, not all critics were pleased with the "quality" offerings of a show intent on directly confronting socially sensitive issues. Just as the character of Lawrence Preston suggested that law making was a complicated, evolutionary practice best left to professionals, some practicing lawyers and community leaders argued that popular representations of the law offered by *The Defenders* and other defense-attorney programs (such as *Perry Mason*) might not be properly understood by nonprofessionals.

A professional panic over the possibility of unregulated readings of these programs emerged. A vocal opposition to *The Defenders* decried the programming as posing serious threats to vital institutions. Some argued that the program either would or could contaminate legal training, bias juridical processes, and more generally, downgrade the "majesty" of the law. From this perspective, the sovereignty and separateness of legal institutions were being jeopardized by popular representation. *The Defenders* and *Perry Mason* were discussions of legal practice deemed dangerous to the degree that they encouraged popularized interpretations and understandings.⁸

Scripted and produced in alignment with “golden age” anthology’s realist codes, *The Defenders* predictably came under such attack for its failings in “realism.” For example, renowned defense attorney Edward Bennett Williams vigorously attacked the program for its falsity in representing “real” courtroom law and denounced the series as part of a patterned depiction of the “slick, glib legerdemain of television lawyers” (1964, 16). Taking up Williams’ argument, Robert Shayon of the *Saturday Review* applauded the influential attorney’s critique and wrote, “Williams... offers first evidence I have seen that *Perry Mason*, *The Defenders*, and other TV dramas are producing harmful results in the nation’s real-life courtrooms.” Lecturing in law schools, Williams is disturbed at how law students are “subtly and almost subliminally coming to understand that criminal cases are decided by rhetoric and malevolent tricks” (Williams 1964, 16).

Along the same lines, during the seventies, Walter H. Lewis, deputy district attorney for Los Angeles, as well as others publicly protested the historical depiction of prosecutors as “tube boobs” and specifically pointed to *Perry Mason* and *The Defenders* as historical culprits. The article in which he voiced this complaint began,

Fact: Most felony criminal trials in the nation are won by the prosecution. But you’d never know that by watching television, where suave defense attorneys reign unchallenged, forever humiliating prosecutors by proving the innocence of the poor guy the prosecution wants behind bars. . . . Some real life prosecutors believe television viewers are prejudiced in the favor of the defense when they become jurors, and consequently, justice suffers. (“Prosecutors” 1975, L1)

Viewing the steady flow of heroic defense attorneys in prime time, Lewis and other prosecutors worried out loud about the impact of such televised texts in a nation in which crime rates were rising. Echoing Shayon and Williams, Lewis complained that audiences would conflate the court styling of *Perry Mason* with operations within his own vocational spaces. In doing so, Lewis revealed his assumptions about the naiveté of television audiences, but more significantly, voiced broader anxieties regarding knowledges uncontrolled by legal professionalism. Popular texts could be interpreted in ways quite contrary to the interests of the police and prosecutorial state. Television viewers were receiving knowledges about the judicial process that some believed to be dangerous to the foundations of criminal justice.⁹

Between a Father and a Son

Who, then, was and is to be trusted to guard law’s boundaries and guide its reformations? In answer to this question, *The Defenders* pointed

viewers to the struggles and tensions between a father and son. As Reginald Rose publicly announced, it was the intention of the show's producers to examine the law through the central familial and adversarial relationship between Lawrence and Kenneth Preston.¹⁰

The elder Lawrence Preston was the sixties TV lawyer prototype—fatherly, noble, rational, and wise. As Horace Newcomb (1974) has observed, he bears strong resemblance to other powerful male professionals on television around the same time, such as Perry Mason, Owen Marshall, and Marcus Welby, MD. He was written as less emotional, passionate, and “radical” than his lawyer-partner son, Kenneth. As Michael Epstein has noted, Lawrence is marked by the qualities that have long coded popular lawyer figures as masculine—namely, detachment and circumspection (1998a).¹¹

The elder Preston demonstrates a tremendous facility to be deeply empathetic with a client one moment and completely detached and “realistic” in the next. In one episode, while Lawrence faces a daunting perjury charge and is on the brink of imprisonment, he remains emotionally controlled, at one point going so far as to apologize for his “uncontrolled” son's angry outbursts against the court. It is this professional capacity of detachment and emotionless problem solving that he works, with mixed success, to cultivate in Kenneth.

The son, Kenneth, is clearly the apprentice—portrayed as the more emotional, less competent, less masculine attorney—in many ways, the lay surrogate, consistently positioned as the one watching a wise elder, learning and being trained up in the proper fashion. While Kenneth often is portrayed as acting on his feelings, cursing law's inadequacies and looking for what could be, the father cautions his son to “stick with the facts” and find more “rational” solutions, using whatever tools law may formally provide. The father's authoritative professionalism is contrasted with the less rational, emotional, and romantic yearnings of his son.

Exercising his pragmatic savvy, there were episodes in which Lawrence Preston found attractive solutions for clients via legal techniques and procedure rather than arguing the substantive issues of law. In “The Nonviolent,” for example, Lawrence Preston finds a procedural or technical flaw in criminal law and successfully frees his client, while Kenneth Preston toils away at a fruitless yet high-minded argument regarding the freedom of expression. In “The Treadmill,” Kenneth complains, “the law is a machine. . . . It is too rigid”—it is heartless, soulless, and mechanical. His father responds as a good technician would: “OK, if it's a machine then why attack it with humanitarian arguments? You can't reason with a machine. You've got to roll up your sleeves and go to work with the tools designed to deal with it. In this case, the device is provided within the law for its own regulation.”¹²

The character of Kenneth Preston can be easily understood as an often forceful, central antagonist unwilling to accept the tensions between substantive and procedural decision making or the traditional boundaries seemingly ensconced in the mechanistic “rule of law.” Throughout the series, Kenneth regularly complains to his father about law’s rigid boundaries and lack of sensitivity to particulars in a way that communicates an unapologetic politics. Kenneth’s passionate “moral” vision—a vision of justice—and Lawrence’s dispassionate professionalized vision of “law” often clash, productively and without manifest closure.

In dialogue with his son, Lawrence Preston also at times makes arguments expressing his unwillingness to accept the well-established, precedential boundaries and processes of criminal law. In a 1963 show titled “Star Spangled Ghetto,” the Prestons are appointed to defend a young couple that has robbed a liquor store and show no remorse for the crime, insisting that the money was needed to start their lives together. Lawrence and Kenneth decide that the only way to defend the pair is to attack the social environment that has produced the accuseds’ point of view. While stopping short of excusing or exonerating their actions, the elder Preston launches into a truly extraordinary, sweeping summation focusing on the venal aspects of materiality and the failure of the environment of these two young people to show them the viciousness of their act.¹³ Frustrated by the constraints and insensitivity of criminal procedure and code, Preston argues that bending the rules can be healthy, asking the judge in chambers, “Doesn’t it bother you to have to conform to the laws?” The judge answers, “Maybe.” Before the trial ends with a hung jury, the district attorney denounces the Prestons’ defense as one that investigates social causes rather than individual facts and warns that such an argument is “outside the law” and could lead to anarchy.

In the episode’s climax, during a particularly tense encounter in the judge’s chambers, the jurist dresses down the elder Preston for arguing about the causes of criminal activity rather than addressing the factual questions of criminal law—whether or not something occurred and what was done by whom. He says to Preston, “It’s not a defense—it’s not based on facts. It has nothing to do with facts. The courtroom isn’t the place to ask such questions.” Lawrence’s reply: “Yes it is, for you and me.”

This interaction is telling. Preston’s resistance to existing legal procedure is both threatening to and recuperative of the status quo. He advocates a healthy bending of the law, only to later say that such bending will improve a good system. He advocates a fresh look at legal processes, motivated by a desire for justice in defiance of normative legal procedures, but also declares that such disruptive questioning should only occur within the exclusive purview of particular, masculine professionals. Thus, in the Preston advocacies, we can see what Julie D’Acci (1994, 115)

has called “the conflation of the Law and the individual heroic male,” which has been a central element of law enforcement programming, and particularly, the police genre.¹⁴

Early-sixties prime time was filled with popular tales for what D’Acci terms “a masculinity in crisis” (1997, 88). As social historians have described, during the fifties and sixties, the convergence of a growing women’s movement—including articulations of an increased sexual freedom for women, new economic and marketplace opportunities for women within the sphere of mass consumption, and discourses positioning men in “feminine” roles of consumerism—prompted a crisis of masculinity registering on multiple social terrains (Epstein 1998a). Michael Epstein speculates that it was perhaps in response to the advances of women into the previously segregated “public” sphere “that the image of the male lawyer providing a public service for society became even more masculine in the qualities it exhibited,” namely, the qualities associated with “modernity’s values of objectivity through distance, autonomy and separation” (1998a, 12–13). The public-private divide, so crucial to male identity and power, was challenged and prompted a popular backlash emphasizing male strength and the dispassionate, “rational” universalized objectivity, popularly embodied in the “wise” decision making of characters such as Lawrence Preston.¹⁵

In television, the response of the industry to this “crisis” was blunt and simpleminded. With very few exceptions, producers simply avoided casting women in prime-time dramas (Golden 1963). Early in the run of *The Defenders*, Lawrence Preston’s wife, given brief life by Jessica Tandy, was pronounced deceased, as the CBS hierarchy found itself “uncomfortable” with the character. Two women, in roles of “Helen,” the firm secretary, and “Joan,” Kenneth’s girlfriend, made brief but somewhat regular appearances during the show’s first season before disappearing almost altogether.

Lawrence and Kenneth Preston’s passions were to be directed toward the law, not women. Advocacy for women was noble; however, intimacy or companionship with them was often unhealthy. For example, in a first-season episode, “The Boy Between,” the Prestons enter a child custody battle, dealing with a small boy and fighting parents. Kenneth becomes “infatuated” with the beautiful mother, consequently loses “proper” lawyerly perspective, and in the end, receives fatherly admonishment to avoid such distractions.

Throughout this episode, the Prestons focus on the question of custody. “To whom should a child go?” is the broad question that the Preston men discuss while apart from the parties most directly involved. While abstracted questions regarding child and parent welfare are central points of program dialogue, the subnarrative suggesting that the wife is suffering from consistent physical abuse passes throughout the episode without

lawyerly consideration. It is, within this narrative framing, a dramatic supplement that cultivates sympathy for the mother but that is legally inconsequential. Simply put, spousal abuse falls outside the boundaries of instituted, legitimated criminal law in the environment of the moment. It is a problem defined as personal and private rather than public and legal. It is to be worked out between private parties outside any intervention of the state. Thus, by placing the operation of law squarely in the “public,” removed from the “private” realm of family, *The Defenders* reinforces the idea that a fundamentally distinct “personal” sphere exists, “which is somehow outside the law’s or society’s authority to regulate” (Polan 1982, 298).

Feminist legal scholars have consistently demonstrated how such boundary constructions are historically gendered, and “The Boy Between” episode nicely illustrates this argument and Michael Epstein’s important insight that fictional television lawyers have acted as popularized cultural mediators, negotiating the constructed divides between public and private, political and personal, or more precisely, “private conflict and public truth” (1998a, 9).¹⁶ Epstein argues that for decades, popular depictions of lawyers worked within the model of the rationalist gentleman-statesman—a description that he assigns to and that certainly suits Lawrence Preston. In his analysis of *The Defenders*, Epstein concludes that as Kenneth emulates his father, the lawyer-statesman ideal is underlined, and “modernity’s coding of public lawyering as masculine” is reinforced.

I largely agree with Epstein’s analysis. Kenneth Preston is certainly his father’s apprentice. However, as mentioned earlier, *The Defenders’* dramatic appeal must also be at least partially understood as attributable to the ways in which the son resists rather than emulates the father. Kenneth Preston’s consistent questioning and voiced discomfort with the father’s approach to legal practice is a central narrative thread in the series, often constituting the most dramatically engaging scenes in episodes, and embodies the tensions worked out imperfectly and daily by those engaging legal institutions—the oppositions between (reasoned) law and (emotional) justice. Kenneth Preston, the young, sometimes brash and moralistic, passionate advocate for the disadvantaged and innocent speaks the concerns of justice to the aging, rational, practical, and established body of the father. The father and son are the masculinized embodiment of legal liberalism and its inherent, irresolvable tensions and contradictions.

The Law of Nostalgia

After more than three decades of absence, *The Defenders* reappeared in 1997. The Showtime network aired three approximately 100-minute

Defenders films that consciously evoked the serious tone, issue-centered writing, characterizations, and thematic concerns of the sixties series and were subsequently described by executive producer Stan Rogow as a sort of contemporary homage to the earlier texts. Rogow, in an interview in 2000, characterized the Showtime project as “not a ground breaking piece of work” but an effort to bring *The Defenders* into contemporary times (Hill 1997). The legal patriarch, an obviously slowed yet spirited E. G. Marshall, agreed to reprise his role of Lawrence Preston but fell ill to cancer during production and did not appear in the third motion picture. He died in August 1998, effectively ending the possibility of further Showtime *Defenders* films.

Because of the earlier death of Robert Reed (Kenneth Preston), certain casting changes were inevitable, and in the Showtime versions, Beau Bridges played Donald Preston, brother of the deceased Kenneth, and Martha Plimpton took on the role of “M. J.,” a former prosecutor and niece to Donald. Working closely with the series originator, Reginald Rose, Rogow and his creative team remained faithful to the earlier characterizations of the Preston men, offering characters who again have a passion for social justice and important legal rights. The topics taken up were ones familiar to viewers of the sixties series, reproducing enduring social concerns regarding the violence and ineptitude of the police, the inadequacy of criminal justice in its frequently coarse, punitive address of crime, and the lack of compassion and humanism in the formalism of law.

These concerns again opened narrative space for interventions prompted by the moral wisdom of the patriarch. In the Showtime premiere, *Payback* (1997), which understandably received more published critical attention than the two subsequent films, the Prestons take on the defense of a killer who has gunned down the rapist who attacked the former’s young daughter. Focusing on the perpetuation of violence threatened by the legal system, Donald argues that the jury “should find a way to end this circle of violence” by not punishing his client severely.

In this revision of the younger Preston generation, and more precisely, the surviving son, Donald, the audience is again invited to appreciate the part of “passion” in the working out of law/justice. Donald Preston is presented as an extraordinarily emotional, passionate man and lawyer – even more volatile than his brother Kenneth – and in his law professor role, he exhorts his students to “not leave passions outside” of their places of work and study. On the other hand, M. J. has a less prominent narrative position, at least in the first two films, but does provide the primary point of internal family clash with Donald, as she portrays a former prosecutor (currently wooed by the district attorney’s office) who continues to hold to staunch prosecutorial and “letter of the law” predispositions. Thus, when her uncle Donald argues that “the law screwed up” in failing

to address the previous injustices experienced by their client and states that “people do messy things,” M. J. reasserts that “the law is still the law” and sardonically salutes her “heroic” uncle, saying, “Thank God you’re here on your white horse to save the day.”

At the conclusion of *Payback*, when the jury deadlocks on a murder verdict, the final word and legal decision making are deferred yet again to Lawrence Preston. The elder Preston goes to “reason,” literally in the “men’s room,” with the district attorney, arguing that the state must do “what is right” rather than follow the conventional retrial procedure strongly advocated by the tough presiding judge. The patriarch’s moral vision prevails, eschewing statutory guidance and overt passions, finding its justification in a kind of compassionate yet “commonsense” compromise that would find no comfortable residence in M. J.’s “law is law” approach.

But what of M. J.? In popular reproductions of the law/justice tension, particularly when the appeals for justice are aligned with men and women conversely articulate the dominant perspectives of “law,” there is most often a resolution based in a reconciliation of the characters involved (Tushnet 1996, 255–58). Most frequently, movement by the woman to a mediating position invites a successful reconciliation of law/justice in a way that portrays the dominant—law—as subsuming oppositional justice concerns (ibid.). In *Payback*, precisely this type of narrative maneuver occurs in the latter half of the film as the formerly prosecutorial M. J. becomes more and more sympathetic to Donald’s passionate advocacy by virtue of spending more time with the defendant’s younger, emotionally scarred daughters. In the film’s final scene, M. J. declares her “true” allegiance, rejecting a job offer by the district attorney’s office to return to the men who “need her,” walking with a smile down the courthouse steps with Donald and Lawrence Preston, bringing together the family as well as law and justice.¹⁷

In *Choice of Evils* (1998), as the Prestons defend an African American journalist abused and treated badly by an inept police department, familiar characterizations again appear. Donald takes on the majority of courtroom argumentation, while Lawrence offers wise counsel and strategic insight and M. J. spends most of her time investigating the case. The film ends with a plea bargain that acknowledges the black journalist’s “over-reaction” to police threats without excusing the egregious actions of the officers.¹⁸

The final Showtime film, *Taking the First* (1998), is marked by the complete absence of Lawrence Preston, as Marshall was too ill to appear. Instead, M. J. takes center stage during the first act. However, her primary “defense” role is to successfully persuade her client, who is complicit with a racially motivated murder, to plead guilty and be fully cooperative with

the state. The Prestons take on the hot-button issue of hate speech yet do so in a way that allows them to appear as quasiprosecutorial. In a strange twist, after their client pleads, Donald and M. J., feeling some remorse for defending a participant in a hate crime, work essentially as prosecutors hired by the mother of the hate-crime victim to bring the leader of the hate group to justice via a civil lawsuit. In doing so, the Prestons articulate how their own, very particular pursuit of justice is in strong opposition to the American Civil Liberties Union and court affirmations of First Amendment protections for even ugly, hate-filled expression.

While *Taking the First* places considerable focus on the victimized and grieving Latino family and has M. J. and Donald articulating how they “hate” defending their client, the three Showtime films, following the stylistic tradition of the sixties series, seldom use many elements of melodrama, and when they do, they place a focus on characters other than the Prestons. In this way (among others), Preston and Preston are lawyers quite unlike their highly rated primetime colleagues, the attorney teams in *The Practice* and *Ally McBeal*. While *McBeal*, in the words of one analyst, “essentially mocks the law as a façade of emotional detachment and reason . . . [and] viewers are repeatedly reminded that everything professional is also personal,” the Showtime *Defenders* continues to reiterate a “statesmanlike” lawyerly ideal from a very different time and cultural milieu (Epstein 1998a, 119).

This fictional construction was criticized and deemed old-fashioned or bland by more than one commentator. *TV Guide Online*, for example, wrote, “A meaningful exploration of the gray areas of law, *The Defenders: Payback* bogs down in a debate it fails to illuminate. The controversy over victims’ rights should have been examined in a torrent of cascading emotions, not talked to death. This movie could take a tip from current legal series . . . which explore thought-provoking issues without sacrificing the satisfactions of melodrama” (“*Defenders: Payback*” 1997, 2).

However, as mentioned earlier, many prominent critics’ response to these motion pictures was largely positive and explicitly memory based—paying belated honor to the series and characters of old. Beyond a typical review’s recounting of the story outlines, these writers typically highlighted the distinguished careers of E. G. Marshall and Reginald Rose in a way that echoed the original series’ emphasis on established, award-winning production talent and pedigree as well as its trademark social relevance and readiness to take on the tough issues of the day.

Characteristic of these admirers, Mike Duffy of the *Detroit Free Press* wrote, “Everything old is new again. And out bounces ‘Payback,’ the first of a series of new Showtime TV movies based on ‘The Defenders,’ a groundbreaking early 1960s courtroom drama. Not a terribly original idea, perhaps. But one that is satisfying and well executed. . . . A blast

from the channel-surfing past, 'The Defenders' still has the right jurisprudential stuff" (1997, 10).

Duffy's praise was typical of the positive reviews for the Showtime project, focused as it was on the past credentials, prestige, and social currency of the sixties series, while adding only brief remarks about the Showtime project as still having "the right stuff." For example, *The New York Times* television critic Will Joyner echoed Duffy's sentiments, deeming the new *Defenders* appealing for its "unusually thoughtful" courtroom drama, finding the old show "appropriate for renovation in the 1990s" (1997, B15). Columnist David Bianculli, while admitting that the *Defenders* cable telemovies came "seemingly out of nowhere," was another among a majority of television critics who traced the series' lineage and concluded with an evaluation along the lines of "it's a new lease on life for a great series that fully deserves it" (1997, D2).

In the eyes of these reviewers, the new old *Defenders* returned, offering nostalgic images of virtuous, non-self-aggrandizing defense attorneys sensitive to the problems and pitfalls of criminal law practices as well as the needs of the state. A father, a gentleman-statesman, had returned to pass on to his other son essential knowledges pertaining to law, justice, and masculinity. An unapologetic nostalgia marked these mainstream press reviews, signaled by more column inches often given to remembrances of the "seminal" sixties series and its venerated connections to "golden age" anthology drama than to explicit evaluation of the 1997-1998 remakes. Reviewers primarily offered praise for a program past rather than present and offered an understanding of the sixties program ensconced in contemporary concerns regarding the working out of justice in a "post-O. J." moment—in which the boundaries and legal definitions demarcating popular media, law, politics, and public-private spheres are incoherent, complicated, and continually contested.

In these moments, the cultural politics of nostalgia, as a way of ordering and understanding the present, come to the fore. For nostalgia is more than an often-decried sentimentality, ignorance, or "errant" thinking about the past that never was. It points careful analysts toward larger social myths, anxieties, and senses of loss. Among the conditions for nostalgia's existence is a sense that the present is deficient, marked by its failings. In address of present anxieties regarding the incoherence and fragmentation of social life and law, it envisions a time that was more clearly ordered, unified, and comprehensible, when the social boundaries of law, public and private, and politics were more coherent and manifest (Lowenthal 1989). As David Lowenthal argues, the past reconstructed is always more coherent than when it happened and certainly more coherent than today: "For all its strangeness, the past thus looks more definitive and magisterial than the present. Hence history reveals and nostalgia

celebrates an ordered clarity contrasting with the chaos or imprecision of our own times" (1989, 30).

It is understandable that some critics would thus praise popular depictions of legal practice that appeared more ordered, definitive, and magisterial than those offered in the present. The reworked *Defenders* was praised for appearing as a short-lived homage to legal storytelling in a reimagined past. For many television critics, the *Defenders* revival reiterated an enduring hope that in dangerous, disordered times, the irresolvable tensions and incoherencies of contemporary law might be successfully mediated, if only the right type of attorneys were to be found.

Notes

1. The 1998 death of E. G. Marshall effectively marked the end of the 1997–1998 *Defenders* revival, after three Showtime motion pictures bearing the series' title were aired. The movie titles, in the order of their distribution, were *Payback* (1997), *Choice of Evils* (1998), and *Taking the First* (1998). Paramount and Reginald Rose hold the television rights to the original program.

I viewed episodes of the sixties television series at the Los Angeles Museum of Television and Radio and found helpful production and publicity materials in the Paramount Pictures Collection housed at UCLA's Arts Library (Paramount Pictures Corporation, Script and Budget Materials, Collection 171, Los Angeles, CA). While the New York City and Los Angeles museums of television and radio hold good collections of *The Defenders* episodes, a full set is available at the University of Wisconsin's Center for Film and Theater Research in Madison. And I am particularly grateful to Mark Alvey for his review of *The Defenders* episodes and his generous help with this essay.

2. Steve Greenfield's (2001) essay is a good example of this scholarship and of a recent analysis of popular media texts, demonstrating how heroic cinematic lawyers are often required to act "outside" of law to achieve justice.

3. *Arrest and Trial* (1963–1964) and *For the People* (1965).

4. It is obvious that at least some of these programs attracted a devout fan following. As Brooks and Marsh explain, although *The Law and Mr. Jones* was canceled by ABC after one season, "viewer response, in the form of thousands of angry letters, was so strong" that the program was brought back seven months later (1992, 499).

5. The discourses of courtroom drama have long fascinated audiences of television and film, and generalized, often psychologically based, explanations for the enduring appeal of such texts have been offered by scholars working in psychoanalytic theory and genre studies. This essay offers a different perspective, placing an emphasis on the thoroughly social nature of such texts.

6. Industry estimates during the season put viewership at twenty-one million per week (Efron 1962).

7. CBS highlighted the program's heritage and talent in its marketing campaign. "Network publicity stressed the anthology track records of [Executive Producer

Herb] Brodtkin and Rose, and the Broadway background of E. G. Marshall, and touted the show's director roster as 'an honor roll of the television arts,' and its writers as 'bywords in the field of television drama?'" (Alvey 1995, 213). The show was quickly recognized and applauded as "quality" television, a part of the industry's efforts toward social relevance and "high-brow" programming.

8. This dialogue highlighted the synergistic relationship of popular culture and law. Repeatedly expressing the concern that there were "real" legal practices jeopardized by "unreal" popular representations, legal professionals affirmed a troubled formal dichotomy while implicitly recognizing and underscoring popular culture's role in the formation of legal understandings. They pointed to the popular as a crucial site for exercises of social control, negotiation, and struggle. In environments such as those marked by the "crises" of the early sixties, professional anxieties regarding social power and control have grown as assumptions of institutionalized law's autonomy and sovereignty are disrupted by the powerful discourses around and within popular texts.

9. According to other critics, dangerous knowledges were also circulated as the show addressed particular issues deemed "out of bounds." This took place on April 28, 1962, as *The Defenders* aired "The Benefactor." In a ground-breaking dramatic treatment of abortion rights that advocated legal change, the Prestons acted as counsel for a licensed physician who was apprehended while about to perform an illegal abortion. The lawyers learn that the doctor has performed such procedures for eight years but echo his conviction that "the law, before closing off one avenue of recovery from frailty of human behavior, must first make certain that another recovery remains, or indeed, exists at all." The jury finds the doctor guilty but asks that the judge demonstrate compassion and leniency. During the trial, the Prestons choose to recognize the "letter of the law," declaring abortion's illegality only briefly, and then depart from it, arguing that codified legal authority does not have adequate flexibility to address this case and situation. In this episode and others, the Prestons conscientiously and repeatedly dismiss formal codes to offer personalized and humanitarian arguments residing outside the institutionalized letters of criminal law. In this way, Lawrence and Kenneth Preston become "the law" themselves, benevolent sovereigns arguing that their moral vision should order human behavior.

So it is understandable that after "The Benefactor" aired, disturbed viewers wrote the show to say that the program had "crossed the line" and was no longer dealing with "the law" as much as moral or political crusading. When "The Benefactor" aired, ten CBS affiliates refused to air the program, and all three of the series' regular advertisers withdrew sponsorship. CBS opted not to rerun the episode during the summer, even though, according to the network, letters and phone calls overwhelmingly commended the program. Series creator and writer Reginald Rose told *The New York Times* that mail response to the episode ran about eleven to one in its favor (May 13, 1962, Sec. 2, 19).

Those upset by "The Benefactor" pointed out that television's melodramatic devices had been used in a way that both swayed viewers and popularized understandings of criminal law. A typical criticism was printed in the Catholic publication *America*. In the periodical, L. C. McHugh, S.J., expressed disagreement with the episode's tacit approval of the physician and his actions and linked this

disagreement with his concern that the law had been damaged. Specifically, McHugh wrote that the episode's "courtroom scenes and by play tended to downgrade the majesty of law and induce disrespect for it" (1962, 232). McHugh's remarks were not at all unusual for *Defenders* critics. Most often, they expressed disagreement with the production's depiction of social issues such as abortion or capital punishment and connected these criticisms to remarks about popular culture's diminishment of legal authority. In these criticisms, *The Defenders* represented not only a contrary moral voice but also a text that dared wed popular realist aesthetics with weighty questions of social order. And in this wedding, the critics claimed, the law was compromised.

Along these lines, Jack O'Brien (1962), columnist for the *New York Journal American*, also blasted "The Benefactor," calling the production "slanted, immoral, cynical, and shrewdly constructed." He wrote that since "The Benefactor" aired, "we have received a tremendous outpouring of resentment against the show and against CBS." Comedian Jackie Gleason took time to affirm O'Brien's stance, and the columnist reprinted Gleason's note: "I thought your comments regarding the television show 'The Benefactor' were absolutely to the point and . . . revealed the show for what it is. This type of TV presentation is the most insidious style of lobbying for all the insane, immoral and just plain quack movements. I'm glad you spotted it for what it is."

Clearly, in the minds of these writers and others, boundaries had been crossed in this popular representation of legal practice. Writers said the show was laden with artistic and sexual politics degrading to the majesty of a professionalized law ostensibly distanced or kept apart from such hurley burley. And, of course, as these criticisms offered implicit and explicit boundaries for law, they did the same, implicitly, for aesthetic and sexual politics, marking out their "inappropriate" intersections with other popular concerns.

10. Reginald Rose, the series chief writer, described this relationship as the central point of narrative tension in his 1964 *Television Quarterly* article defending the program.

11. In terms of the division of labor, the roles were also clear—the elder Preston dressed more formally, made the majority of in-court presentations, and generally worked as a student and reformer of law. The son had a more casual style and spent more time outside the courtroom, often doing the lawyerly legwork of conducting interviews and investigations while his dad studied the legal questions at hand.

12. But, of course, not everyone could handle the powerful tools of due process, no matter how wronged or oppressed. In several episodes of *The Defenders*, a caution was voiced, via characterizations of flawed, sometimes disastrous attempts to practice jurisprudence outside the courtroom, that criminal law is best practiced and managed by the select few, the officially designated—most specifically, legal fathers: male lawyers and judges. For an example of this theme and caution, see the episode titled "The Tarnished Cross."

13. Lawrence Preston argues, in part, "We live in a materialistic society where the ownership of things is what rules our lives. And if we can't own what we are told we must own, well then, we become miserable unhappy envious bitter wretches—and some of us retaliate by committing crimes against the society which has imprisoned us in its peculiar ghetto—a ghetto reserved for people who are unable to own the proper possessions."

14. D'Acci goes on to note that the narrative separation of the male law enforcer from significant relationships with women is a historical hallmark of police programs and that such separations, along with an emphasis on the dedication of the professional to his vocation, render the figure and body of law enforcement as "'worthy' of articulating . . . an abstract notion of Law" (1994, 116-17). This analysis of law-and-order fare fits well with description of *The Defenders* and other lawyer programs from the fifties and early sixties. In addition to Lawrence Preston, central male characters on *The New Breed*, *The Detectives*, *The Rifleman*, and *Bonanza* all served as explicit embodiments of frontier or urban law – and all had wives who were deceased.

15. On the terrain of popular culture, the rise of the "playboy" character and Hugh Hefner's *Playboy* publications joined the period's surge of consumerism with myths of male virility.

16. See, for example, Polan (1982); Taub and Schneider (1982); and MacKinnon (1982). Traditional male power has long extracted, or abstracted, bits from lives lived whole and featured these parts as the whole, or as paramount and objective truths, while neglecting "those injuries made invisible by the bounds of legal discourse" (Williams 1991, 110). Such abstraction and boundary constructions have long been of a piece with the destructive oblivions and violence of law (Sarat and Kearns 1993).

In a sense, it is an act of violence whenever legal will is imposed on the world, wherever a legal edict, judicial decision, or legislative mandate is enacted. As has been dramatically and concretely evident, particularly in the lives of women and people of color, from the sixties to the present, law routinely cuts, wrenches, or excises life from its social context. So conceived, law's violence is hardly separable from legal liberalism's "rule of law" – from the "deadening normalcy of legal abstractions and routine interpretive acts that claim for law a position beyond positioning and universality made plausible only by the systematic privileging of some voices and silencing of others" (Sarat and Kearns 1993, 210-11).

Feminist critiques and methods have offered a strong challenge to such patriarchal/legal power, disaggregation, and legitimated abstraction. The warning from feminist theorists is that such abstraction must be relentlessly interrogated and resisted, because when institutionalized, it functions to "shield the status quo from critique" (Scales 1993, 45). So it is that, as legal scholar Ann Scales has written, "feminism is vitally concerned with the oblivion" fostered by institutional and lawyerly beliefs in due process divorced from everyday lives and broader gender and racial dynamics (p. 45).

17. See Tushnet's (1996) discussion of the film *Class Action*, in which he makes a similar argument regarding the negotiation of gender and law/justice tensions within that film.

18. This plea bargain is accomplished only after the Preston men have engaged the journalist in a hostile, mock "cross-examination" exercise to coerce him into seeing his own fragility and culpability in the case. Having been saved from his own worst impulses and stubbornness by the savvy and insight of the Prestons, in the end, he, like so many others, expresses gratitude for the Preston perspective on justice.

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