

Introduction

In the courtroom of honor the judge pounded his gavel
To show that all's equal and that the law is on the level . . .
And that even the nobles get properly handled
Once that the cops have chased after and caught 'em
And that the ladder of law has no top and no bottom.

—Bob Dylan

I have been writing and teaching about television for a long time. “It’s a dirty job, but someone’s got to do it,” I usually reply when friends or colleagues ask, “How can you stand to watch all that junk?” This happens less often these days, of course, as the study of film and television has found its way into most institutions of higher learning. But it does still happen. Mostly, I suppose, because the television genres I have most often found interesting are indeed the ones most likely to be thought of as “junk”: soap operas, talk shows, made-for-TV movies.

So this book, about law and justice as seen on television, represents something of a departure for me. In fact, until a few years ago, I had never paid much attention to courtroom dramas, crime shows, or—although I am an inveterate news junkie—even stories about trials, courts, or the law in general. In fact, I was about as ignorant of these issues as most Americans.

And then something interesting happened: my son became a lawyer. “Well, what’s so interesting about that?” you are probably thinking. The world is full of professional, middle-class parents whose sons and daughters become lawyers. But my son Jon didn’t just become a lawyer; he became a criminal defense attorney, one of the most reviled specialties of one of the most reviled professions in the nation. And he was not just

your garden-variety defense attorney who—if one listens to all the jokes about them—make bundles of money being sleazy, corrupt, and soulless. No, my son chose to become the worst kind of defense attorney: a public defender—the kind who makes very little money defending the most unsympathetic and, to most Americans, the scariest segments of society. So, no proud “my-son-the-lawyer” stories for me. In Jon’s office, the staff attorneys have buttons that read, “Don’t tell my mother I’m a public defender; she thinks I play piano in a whorehouse.” In fact, I’ve had friends—self-proclaimed intellectual, progressive friends—who have actually asked if my son ever feels guilty about defending “those people.” Many others look at me in an odd way that I have come to recognize as shorthand for “poor kid; couldn’t get a better job; what a loser.” Because everyone knows that even first-year graduates from second-tier law schools are making six-figure salaries at major firms these days.

You can see where this is going. I like my son. I like and respect his idealistic, amazingly committed colleagues. I’m proud of him and the work he does. And I, at least, know that he had options, that he turned down other offers because this was what he *wanted* to do. Where, I suddenly began to wonder, did this image of defense attorneys come from? And when did it start? Since I have an obvious professional bias toward first looking at the media, I thought back to the days when, as a child, I did actually watch law shows. In those days, there was usually just one TV set in a household, and since it was the father who usually decided what the family watched, we ended up seeing a lot of shows about lawyers. The ones I remembered best were *The Defenders*, a drama about a very liberal father and son law team that took on a lot of controversial social issues; and of course *Perry Mason*, who never had a client who wasn’t falsely accused and never lost a case to the sleazy district attorney who always opposed him.

By the 1980s, lawyers had gradually begun to reappear on TV. There was *LA Law*, for example. But it featured a very high-rent Los Angeles firm whose primary focus was not criminal law. But *LA Law* was the only legal series in a decade that was most notable for introducing such highly successful “quality” cop shows as *NYPD Blue* and *Homicide: Life on the Street*. In fact, as I looked back at the history of top series from the eighties, I realized that *Cagney and Lacey* and *Hill Street Blues*—the first of these lawyerly hit shows—had begun a rather intriguing new trend that I think of as “Cops with a Heart” series. All these series had a more or less liberal, even “politically correct” slant. But it was not the lawyers but the

police officers whose hearts bled for the underprivileged; who anguished about sexism, racism, and poverty; and who—and this was really innovative—had complex personal lives filled with the *Sturm und Drang* of late twentieth century American life: adultery, gender violence, divorce, alcoholism, drug abuse, troubled and troubling children, and more.

These series were instructive as signs of the times, for they signaled a subtle and in many ways contradictory turn in social consciousness. They represented, as I later understood, a transitional ideological moment. Liberalism was not yet dead; far from it. In fact, the producers of these series were sixties-bred liberals themselves. But already you could sense in these series—in their very choice of law enforcers as heroes—the kind of subtly conservative “law and order” mentality that my friend expressed when he worried about my son’s guilt about defending “those people.” The folks who had boldly sung along with Bob Dylan when he insisted that “to live outside the law you must be honest” were no longer so sure. In fact, as they got older and more “established” themselves, their sympathies—while still ostensibly liberal, even leftist—were subtly shifting away from those who broke the law to those who protected an increasingly fearful middle class against “those people.”

Of course, there were also, during these transitional years, a few series that did feature liberal, “bleeding heart” attorneys for the downtrodden, such as *The Trials of Rosie O’Neill* and *Sweet Justice*. But few TV followers reading this book will, I suspect, be able to recall them—as I myself did not until my research into TV history brought them back to mind. “Oh, right,” I would think to myself as I leafed through my reference sources. “I remember that show now. It wasn’t bad while it lasted.” But in each case, it was these series that did not in fact last more than a season or two, while the ones that tend to come to mind rather more quickly—the cop shows just mentioned—obviously did.

If cops were largely on the rise and lawyers in decline during the 1980s, at least in fictional series, there was another media phenomenon that would soon emerge on the heels of this trend in fictional drama. It helped me understand the sudden interest—largely negative, if not downright vitriolic—in the law profession that I had been picking up in so many unlikely places: it was the sudden rise, at the beginning of the 1990s, of the live-televized criminal trial. In fact, it was the amazing impact of these early televised trials that clearly led network producers to reprise the long-dormant legal, courtroom-centered series that are now ubiquitous on virtually every network’s prime-time schedule. But in its new incarnation,

the genre displayed a decidedly different ideological slant than its predecessors of the fifties and sixties; for now it was almost invariably the prosecutors, not the defense attorneys, who wore the white hats. And even when this was not the case—as in series such as *The Practice* and *Philly*—the defense attorneys were a far more jaded, morally ambiguous, or at best ambivalent lot, as uncomfortable about defending “those people” as my friends assumed my son must be.

Why did the coming of the televised criminal trial, and especially Court TV, the twenty-four-hour-a-day law channel that aired the most memorable and socially significant of these trials, bring with it such a jaded view of defense attorneys? Well, to be fair, it was not Court TV, or television at all, on its own that produced such a negative attitude toward defendants and their defenders. Rather, as the cop shows mentioned above indicate, there already was a growing sense of fear of “criminals” and sympathy for the law enforcement officers and prosecutors who pursued, caught, and imprisoned them. And implicit in that growing “law and order” mentality was a parallel sense of growing distrust of those who worked to free what was more and more being perceived, by liberals and conservatives alike, as a large, dangerous, and increasingly incorrigible “criminal class.”

Of course, not all Americans shared this view, but there is certainly evidence that such attitudes were increasingly common among Americans beginning, perhaps, in the 1980s but coming into clear and documented ideological dominance during the 1990s. I have therefore focused on the nineties and, in the final chapters, charted the trend’s actual intensification in the years that followed. Indeed, there have been a number of significant studies by sociologists and criminologists of the widespread myths about the rise of crime in America and the growing—often unfounded—fear of crime and criminals among American citizens. Among the most detailed and thorough accounts are Steven Donziger’s *The Real War on Crime* and Mike Males’s *Framing Youth: 10 Myths about the Next Generation*. Both authors document the common myths that, according to polls, hold sway among Americans, and they proceed statistically to debunk them all. Donziger, for example, cites polls showing that Americans believe that street crime is increasing; that it is more violent than in the past; that more police officers are being killed; and—perhaps most interestingly—that criminals are different from the rest of us. None of this, as it turns out, reflects reality, although it all certainly does reflect recent administrations’ “tough on crime” propaganda and

the media's making commercial hay out of these "made for prime time" sensational myths. Males takes a similar approach to the widespread, much believed "facts" about the growth and increasing violence of youth crime. Again, he finds that polls show that most of us believe such myths, but that they are almost entirely the result of government and media propaganda and fear tactics, a subject with which Donziger also deals, along with other mythologies of crime today.¹ But it was only when the trials of these criminals were brought to TV, particularly in their most sordidly sensationalized versions, that lawyers themselves became the focus—the largely unpopular focus—of television viewers and producers in general.

This increasingly intense focus on crime and criminals as major issues in American society is indeed a relatively new phenomenon—in the twentieth century generally, but especially in the last decade or so. It has been documented by legal historian Lawrence Friedman in his thorough and authoritative *Crime and Punishment in American History*. According to Friedman, it was the federalization of so many crimes that had been issues for the states before the twentieth century that began to draw so much national attention to crime as a "problem." As he puts it, "One of the most profound trends in the history of government in this century is the drift or pull or rush toward the center," which tends to make all issues "national" and therefore subject to broad public awareness and concern. This has certainly been true of crime as a public issue. For as, in Friedman's term, the "federal leviathan" of the last century grew, the number of acts and behaviors deemed criminal grew exponentially. One such law that Friedman lists as fairly typical in the first stages of this trend, for example, was the 1923 law that made it a crime to carry "commercial sponges measuring less than five inches when wet" across state lines.

As time went on, according to Friedman, the number of such new "crimes" escalated as the government strove to create an issue that might serve as a national unifier. It was the coming of increasingly sophisticated communication technologies—especially television—that truly, in Friedman's words, made us into "one country, with one capital, one primary center of power,"² and, as much of this book will argue, gave the state the vehicle through which crime could be framed as a central concern for all Americans.

A brief overview of crime in American history is useful in helping to see how, by the 1990s, crime had become the dramatically central

national “problem” it is today, according to the government and media. Neither Washington nor Lincoln, for example, even mentioned crime in their inaugural addresses. It was Hoover who first mentioned crime as a problem and established a task force to study it. And until the 1960s, succeeding administrations continued to build upon this focus on crime as a national problem. In the 1960s, however, as we shall see, the trend was temporarily but dramatically reversed, as an extremely liberal Supreme Court made a number of rulings favoring defendants’ rights over the power of the government. This liberal turn—like so much else about the 1960s—had the effect of polarizing the nation and, as Friedman explains, by the 1980s there was “a wave of backlash” against the permissiveness of the 1960s as “a wave of conservatism swept the streets.” But it was in the 1990s—when television began to focus the extreme attention on criminal justice I am analyzing—that this backlash created some of the most repressive and punitive trends in criminal justice the nation had yet seen. Friedman lists, among these trends, many of the issues I will be discussing, such as the rise in prison construction; the decline in prisoners’ and defendants’ rights; the rise of the Victims’ Rights movement; and the reinstatement in more and more states of the death penalty.³ My emphasis on the 1990s is thus in the context of this history of criminal justice policy and its links—as Friedman clearly acknowledges—to the centrifugation of national justice policy and the role of television in bringing that national focus to the broad public as perhaps the major issue of concern for Americans.

Since Friedman himself makes such a point of it, it is probably useful now to comment briefly about an issue that will come up explicitly, and implicitly, throughout this book: the power of television itself—of *viewing* these trials as opposed to merely reading or hearing about them. For one of the most important things about the coming of law to television in all its forms and genres was the very fact that television *is* a visual medium. As art historian and popular-culture analyst Erika Doss explains in discussing the power of television in the 1950s, “Sight is the dominant sense in modern Western culture.” “How else explain,” she writes, “the phenomenal popularity of television over radio?”⁴ And it is indeed this privileging of sight over other senses in Western culture that goes far to explain why televised trials were able to capture the imagination of so many people, engage them in an intense interest in things legal, and, through the use of images that compel deep emotion, to make the case for harsh criminal justice laws.

Of course, television did not create the public interest in trials, especially sensational trials. Ever since the advent of mass media, even in its most primitive forms, the public has had a great interest in sensational trials. As early as 1709, Dr. Henry Sacherell, an Anglican minister, delivered a sermon before the House of Commons in England, warning about the dangers of the Protestant dissenters to the Commonwealth, challenging the Whig leadership's commitment to contractual government, and calling for the return of the traditional Anglican, Tory belief in obedience to a Supreme Power. The sermon was considered seditious by Queen Anne and the Whig majority, and Sacherell was impeached for "high crimes and misdemeanors." The trial lasted twenty-five days and was, in every sense, a public spectacle heretofore unknown in England's history. Pamphleteers and newspapers, in following the trial so carefully, made it a matter of universal public interest and debate. While not a criminal trial, like the Clinton impeachment, it was, in its day, an event of great interest and heated debate.⁵

Moving closer to our own shores and public concerns, any number of sensational trials have captured the public imagination and become "public spectacles" despite the absence of television. The Scopes trial, the trial of Leopold and Loeb, of the Rosenbergs, of John Hinckley, of the Chicago Seven—all were major media events despite the absence of cameras in the courtroom. One could argue that it was not television that created the trial as public spectacle, but rather that the coming of the cameras, which allowed television—a visual medium—to become the central venue for the circulation and discussion of such spectacles, has transformed television itself, perhaps more than vice versa. Television producers, in an age when cable TV was opening up huge new venues for new kinds of television programming and new products, recognized the power of the trial as a form of dramatic programming: it had the ability to capture the public imagination as few other nonfiction forms could.

But it took a very special trial, at a very special moment in our political and televisual history, to garner the kind of public attention needed to make this transformation work. In the 1990s the right-wing slant in political thinking, especially around issues of crime and justice, had clearly become the dominant ideology of the day. With the rise of cable as a prominent presence in most American homes, the two events came together, making the major strands of the trend I am tracing become truly significant. Thus, as we shall see, it is in the 1990s that the shift in television programming, running parallel to the shift in legal

policy itself, arises and grows. Therefore, the 1990s are the major focus of this study.

The first trial to be televised nationally to a huge, deeply engaged and enthralled public hit the homes and hearts of America in 1994: the trial of the Menendez brothers. The two young men had allegedly shot their wealthy mother and father in cold blood while the parents sat peacefully eating ice cream and watching television in their Beverly Hills mansion. They then went on a wild spending spree, buying everything from condos to gold Rolex watches, finally “swaggering” into court for their arraignments in brand-new Armani suits. Virtually everyone in America knew these details. And how did we know them? Because the proceedings were seen, in full color, gavel-to-gavel or in nightly newscast clips, on virtually every TV screen in the nation.

It was the Menendez trial that first hooked me on the topic of television and law. And it was the Menendez trial that opened the window that provided me with the route toward the answers to the question I had been asking myself since my son became a public defender: Why are defense attorneys so reviled and demeaned in public discourse and consciousness these days? Having already begun searching the media for answers to this question and educating myself about the law, the Constitution, and the workings of the criminal justice system, I watched this trial with very different eyes than most of my friends and colleagues. To them—and to the many nonlegally trained media commentators who couldn’t get enough of the trial—it was a simple moral issue: these monstrous kids did it; they should pay for their horrific act, preferably with their own lives.⁶

But by then I was looking at the trial and its major players and commentators through a somewhat different, more political (if equally moral) prism. What I was seeing was less a battle between good and evil, between “innocent” victims and “evil” killers, than one of dueling ideologies about the family, gender, and generational relations. More intriguingly, I saw a battle between differing views of what a criminal trial is really about. The more I watched and listened to the arguments, objections, judicial rulings, testimony, and cross-examination of various witnesses, the more clear it became to me that what was going on in that televised courtroom—and in the minds of its living-room and press-room audiences—was far more seriously a dispute about the courtroom itself: its rules, its assumptions about relevant issues and testimony, and its actual function in American society.

To understand this phenomenon, we must recall that the legal system, like all American institutions, had not escaped the influence of the liberal ideas of the social movements of the day. Feminism, critical race theory, and other progressive ideas born of those movements had made their way into courtrooms while young attorneys who had been a part of those movements had begun to devise new defense strategies such as the “battered woman defense.” They challenged the system to expand its interpretation of “guilt” and “innocence” by including newly minted ideas—for example, that defendants’ previous experiences might reasonably lead them to commit acts of violence previously viewed in more black and white terms. The Menendez defense, centered largely on issues of emotional, physical, and sexual child abuse by a brutally authoritarian patriarch, was clearly indebted to those movements. As Donziger, Males, and others document, however, a new “law and order” mentality was setting in—in a sense a backlash against the admittedly brief but extremely influential interventions of the sixties. Issues of gender, race, family dysfunction and abuse, gay rights, and other issues politicized by the sixties’ social movements had inevitably affected the legal system as young, radicalized law students entered the arena. The Menendez trial was, among other things, a battle of competing ideologies: one on the rise, one in decline.

But ideology itself does not make for great drama. Something else transformed these ideological issues into great drama: television. For television—as I have noted and as the Menendez trial made vividly clear—relies far more than print or radio on emotion and dramatic intensity for its appeal. The Menendez trial was nothing if not emotionally intense: tears, stories and images of outrageously vicious acts against children and parents; heated battles between opposing attorneys as well as judges and attorneys; unusually depraved and villainous witnesses as well as heartbreakingly sympathetic ones; and a set of defendants and attorneys who were themselves unusually telegenic in personality and style. All of this made for terrific television.

But at the end of the day, while the defense team was masterful in its own use of these techniques—so masterful, in fact, that the actual jurors could not agree on a verdict in what the prosecution had assumed was a slam-dunk case—the larger, public audience was not only shocked but outraged. In fact, the Menendez brothers became symbols of a system gone woefully astray, in which the courts had become so befuddled by

psychobabble and “abuse excuses” that they were allowing cold-blooded killers to go free, at least temporarily.

Two major factors were responsible for this widespread indictment of the outcome of the first Menendez trial. The first was the growing right-wing sentiment against “soft on crime” judges and juries, the growing fear of crime, and the desire, on the part of more and more Americans, to see criminals, no matter what the reasons for their actions, given harshly punitive convictions and sentences. The second trend under attack by the public and most of the media was more subtly political. Television drama depends foremost on “closure,” what Bertolt Brecht once cynically described as “Happy endings/Nice and tidy.” While it is true that “closure” can be achieved by any number of definitive conclusions, including, for example, an acquittal of an innocent defendant—the mainstay of early legal series such as *Perry Mason* and *Matlock*—the rising anti-crime/criminal mentality of post-sixties America created an audience of viewer-citizens who were increasingly demanding a particular kind of closure: the conviction and punishment of the evil offender. One need not watch trial coverage of murder cases and hear the hue and cry for blood by friends and loved ones of crime victims to recognize this syndrome. One need only watch the news or read the print-media columnists to know what I am talking about. Whether it is the “war on terror,” the “war on crime,” or the “war on Saddam Hussein,” what the president promises, the media encourages, and the polls indicate is that most Americans today want “revenge” against those deemed “evil.” But the complexities and subtleties of the issues raised by the Menendez defense team—by the social movements of the sixties themselves—did not lend themselves to this or any other kind of closure.

The Menendez trial, then, was emblematic of a variety of interlocking themes that I want to explore in some depth in the bulk of this book. It marked a moment of high dramatic conflict between opposing views of justice—and other, much larger social issues—one liberal, one increasingly conservative. But it also marked a moment when—largely due to the demise of sixties’ activism—the courtroom was increasingly replacing other, more traditionally political arenas as the major sphere within which vexed social and political issues of all kinds were being debated and ruled upon, both institutionally and publicly. This is one of the major themes I want to explore in this book. For, if television has made of these trials the kind of nationally unifying public event traditionally reserved

for political and natural “disasters,” then television has also played a major role in politicizing the legal system in ways that have made it the primary arbiter of important social and political policy issues.

The Menendez trial, and the others we will examine, illustrated an important and problematic trend that television did not “cause” but which its inherent dramatic appeal helped to promote: the “legalization” and “criminalization” of a host of issues traditionally seen as being social, cultural, or political and assumed to be best handled by the institutions established to deal with them. Indeed, the turn to the legal system for “solutions” to social issues had serious consequences: it implicitly precluded any idea that social forces and institutions might be responsible for these problems; and that, in turn, these forces and institutions should perhaps be attacked or amended in order to “solve” them.

In other words, root causes of social decay and corruption were passed over, ignored, and eventually even eliminated from public debate by the far more simplistic turn to criminal justice as the sole arbiter of these matters. Was there a problem with teen-age rebellion? Take it to the courts and let the judge and jurors decide what to do about it. Was family violence on the rise? Then criminalize and legalize the issue and let the courts determine what to do about it. Indeed, almost all issues that had, in earlier, more liberal periods, been seen as products of larger social forces and institutions were suddenly being seen as matters that could most cleanly and finally be disposed of by defining them in legal, often criminal terms. Those involved could be treated as perpetrators and victims of something far more cut and dried—indeed black and white—than the panoply of social, economic, and political forces that had previously been impugned. Now it was simply the evil of crime, of the criminal act or character, that was to be blamed for our major troubles.

The solutions offered by this construction of social problems were also those used by the criminal justice system: the array of penalties—fines, probation, community service, incarceration, and, ultimately, death—that the criminal justice system is set up to order and enforce in all cases brought before it. It is not surprising, then, that in such a context of thought and drama, not only the criminal defendants but also their advocates came to be seen as the bad guys, the un-Perry Masons who worked so hard to let these rabid criminals run loose upon our streets to mug and burgle and maim and kill again. Ergo, the birth of the defense attorney as villain.

One can see the appeal of this kind of simplistic thinking. Family, gender, and generational disputes are clearly among the most vexed of current social issues, as families unravel in threads of increasingly visible and televised “dysfunction.” Issues of racial violence and unrest and apparent rises in crime, especially youth crime, are at play, too.

It may seem odd to be discussing fictional series and hard-news broadcasts as though they were more or less interchangeable. But, in fact, one of the main themes of this book is that, although there *are* major differences that largely have to do with issues of race and class, the two types of programming share an ideological similarity in their approach to the causes and cures for social problems of all kinds. This approach is the one offered by criminal justice, with its white-hatted prosecutors and police officers and its black-hatted defense attorneys, and with its ultimate focus on the narrative closure that punishment, retribution, and banishment from society of the “criminal” conveniently brings with it.

Thus, as I will argue and demonstrate, there is an increasingly blurry line between what is “in the headlines” and what shows up on dramatic fictional series. While the fictional or entertainment versions of legal justice are in many ways less realistic than the more serious documentary forms, it is the fictional portrayals that are more likely to have been seen, and intellectually and emotionally digested, by viewers. Most people, after all, have some familiarity with *Law and Order*. But fewer people are likely to be as familiar with the many newer series, on Court TV and elsewhere, that give far more detailed, if ideologically biased pictures of the criminal justice system as it actually works.

As someone who teaches university students, I am all too aware of the influence of fictional television on public thinking. Class discussions more and more frequently reference shows such as *Law and Order*, *The Practice*, and even *Ally McBeal* in discussions of legal and criminal justice issues, as if these fictional representations were not only “torn from the headlines,” as advertised, but are virtual representations of legal reality. Indeed, a friend of mine told me about an incident in her own classroom. When she asked what, if any, newspapers her students read, one young man raised his hand and said, “I don’t read the paper but I watch *Law and Order* and that’s how I keep up with what’s going on in the world.”⁷

Which brings me back to where I began: the fictional series I first began studying in my early attempts to understand the widespread animosity toward defense attorneys. The impact of Court TV, and of trials like the Menendez trial, was broad and far reaching. Although the success of the

fledgling cable network ironically led to its ultimate fall in ratings as more and more networks began doing what Court TV had proven to be so lucrative—covering, commenting on, and investigating the workings of the criminal justice system—its impact on television programming generally has been profound.

In fact, my friend's student's reference to *Law and Order* is not as surprising as it may at first seem. By the time the Court TV bug had infected most of America, the networks had already figured out that the time was ripe for the return of the dramatic legal series. The first and most successful of these was *Law and Order*, the longest-running series still on the air, with two successful spin-offs and an endless run of reruns on both TNT and A&E. All of these reflect the new turn to the "law and order" mentality I have been describing. Since the debut and astounding success of this series, almost twenty new law series have surfaced, some still around, most more short lived. Nonetheless, the dramatic success of any new television genre is a marker of some significant social turn. These new law series are, as I will show, among the most telling markers of our current political times.

I will begin my discussion with these fictional legal entertainment forms, which are so widely seen and discussed by many of us, and will then go on to investigate the less familiar nonfiction legal genres, primarily those invented or suggested by the success of Court TV. Because the power of live trials and the many venues that now comment and elaborate on them have proven to have a hold on the American imagination, we must also deal with the fact that this imaginative hold has generated a large number of fictional and fictionalized legal series—and a huge number of devoted viewers.

I have divided this book into two major sections. In Part One I analyze the popular and familiar series that most clearly mark the shifts in television's dominant ideology about law and justice, crime and punishment, and the way these shifts have coincided with broader trends in legal and political policy and history. Chapter 1 analyzes, in more generic terms, two of the most popular, long-running dramatic series: *Law and Order*, which employs the conventions of film noir, and *The Practice*, which is pure melodrama. My intent here is to demonstrate the second major thematic thrust of the book as a whole: how such stylistic and generic choices tend to lend themselves particularly well to liberal or conservative readings. For while *Law and Order*, the earlier series, features

prosecutors, its noiresque features in fact make it noticeably less conservative than the more recent, and far more melodramatic, *The Practice*, even though this series features defense attorneys as heroes. Thus, the interplay of aesthetics, politics, and legal history come together in complex and often contradictory ways that need to be understood in order to fully understand how television “makes meaning.” Chapter 2 deals with *Cops*, which, because it is a “reality” series using live footage of police officers on duty, provides a realistic view of those the police most often tend to apprehend, and why. However, the show does this in a form so distorted by visual and dramatic technique that it is hard to see it as less fictional than the fictional series we are more used to.

Finally, I look at a new series which, I believe, while perhaps ahead of its time, marks a new and important trend in series television: the prison drama, as exemplified by HBO’s bold and innovative series *Oz*. This is the first series to go beyond the police station and courtroom and look at what happens after sentencing, when the convicted defendant is actually incarcerated. Although “highbrow” in the world of television series, this show is in fact much closer in tone and conservative implication to the tabloid “reality” series discussed in chapter 2 than the earlier “transitional” series such as *Law and Order*. Thus, the turn to more conservative ideological slants in entertainment programming, as I will also argue, tends to produce a shift in all these genres toward more melodramatic, and often brutally violent and expressionistic styles and conventions. While the tabloids reflect a more socially realistic view of the typical “criminal,” if not the crime fighter, there is enough blurriness between the two forms to produce an admittedly contradictory and complex picture, but one which, nonetheless, reflects an inherently conservative turn in programs addressing issues of law and justice in general.

To see the blurriness, with all the contradictions inherent in the turn from fiction to nonfiction, we turn in Part Two to a primary focus on non-fiction television programming, which presents itself as less entertainment oriented and addresses the viewer far more definitively than the series discussed in Part One: as a *citizen* meant to take seriously what is being shown and to think about its implications. I begin with a long chapter charting the history of the coming of cameras to the courtroom, the rise of Court TV, and the parallel rise of the live televised trial as major media event. For it is on Court TV that law most dramatically and explicitly becomes entertainment; and it is on Court TV that the blurry line between the two categories becomes most evident and problematic. The inherent

conflict, in a commercial medium, between producing serious educational fare and making money through ratings has always been a vexed issue. As one critic put it, “While Court TV’s avowed goal is to educate . . . production decisions to cut between trials as well as decisions about what trials to be aired, are reflective of the network’s sensitivity to luring audiences more used to afternoon soap operas than dense trial coverage.”⁸

Nonetheless, as I have already suggested, there is something to be said for the seriousness of trials that deal with what critics blithely dismiss as “soap opera fare.” The issues on which Court TV focuses, while aimed at a broad audience drawn to sensationalism, are also often among the most vexed social issues of the day. The very fact that they are now being framed as criminal issues not only demonstrates the blurry line between “entertainment” and “serious programming,” but also, as I show in this section, the very real dangers of criminalizing issues that are more appropriately handled by other discourses and agencies.

The chapters that follow deal with major social issues: gender violence, juvenile delinquency, family dysfunction, and the coming of a major new social movement, the Victims’ Rights movement. This is arguably the most influential new movement of our time, one which fits perfectly with the rightward drift of legal and political thought and practice of recent years. I have not chosen these particular issues at random. Throughout the book I demonstrate the ways in which the criminal justice system and, in turn, Court TV and the other discussion and documentary series it has spawned, has increasingly moved toward a broadening of what is considered “criminal behavior.” More and more, it includes issues that have traditionally been understood as family or social issues handled through extralegal agencies. For this reason, while we watch these trials or the spin-off series that discuss them we are increasingly being led by the media to understand these matters in terms of criminal justice concepts and processes of resolution. My choice of topics thus reflects the realities of what is actually going on in real courtrooms today and then reframed and revisited on television: what I call the criminalization of American life. Gender issues of all kinds, for example, are now being negotiated primarily within the arena of the criminal justice system. And to a lesser but increasing extent, so are issues of family dysfunction and deviant or rebellious youth behavior.

Similarly, in courtrooms across America, the presence of so-called victim impact statements, from friends and family members of victims of crime, play an increasingly large role in determining the punishment for

convicted offenders. This is a dramatic switch from the more liberal tendency dominant—if increasingly under siege—from the 1960s through the 1980s, when the courts were still at least nominally committed to protecting the rights of the accused. This switch has helped to shift the pendulum toward the public's major concern with the punishment of “wrongdoers” who are often already judged and condemned by the media before a trial even starts. Thus, the particular issues I discuss in this section have been “chosen,” so to speak, by the legal system and media themselves, and are therefore of particular importance in understanding the drift of criminal justice policy and the ways in which television has tended to support and advance it.

In all of these chapters, I have followed a particular strategy. I start by tracing, historically, the trends in both criminal justice and media treatments, using different genres for each issue. I first compare the earlier, generally more liberal treatments in traditional genres with the far more politically problematic representations of these issues in current versions of traditional genres. But finally, and most importantly, I turn in each chapter to the much imitated Court TV, focusing primarily on its *Crime Stories* series which, in the style of “reality TV,” edits down to one hour mini-docudramas the actual footage of trials.

All chapters include historical analyses of how the traditional and classic forms have also shifted—sometimes radically, sometimes more subtly—toward more conservative ideological biases along with the changing political times. But it is in the rise of the increasingly popular and influential Court TV and its imitators that we see most starkly the radical shift in political perspective produced by the framing of these issues in narrowly limited legal contexts. For the chapter on gender violence, for example, I compare early, and then later, docudramas with typical Court TV trials that focus on these issues. I try to demonstrate how, historically, the ideological shift crosses genres while it still appears more starkly and explicitly in documentary programming of the Court TV variety. To show the criminalization of the family, I trace the shifts in early and then later daytime talk shows to demonstrate how this ideological slant crosses genres as times change. To show the demonization of youth, I use earlier and more current cinematic treatments of “juvenile delinquency” as a way of identifying shifts that cross genres, while also focusing on the more explicitly ideological nature of that shift in the Court TV–inspired newer genres.

Why is this shift most explicit on Court TV's programming? The reasons are several. First, single-issue networks such as Court TV have an unavoidable need, in the interest of filling all their airtime, to show much more clearly the class, race, and gender biases of what seems a far more egalitarian system on the fictional shows than actually exists. But perhaps more significant is the fact that programs like Court TV's *Crime Stories*—which, unlike fictional series or even a series like *Cops*, demand to be taken seriously and engage us as thoughtful viewers—come complete with editorial narrative commentary from legal “experts” who lead us to the “correct” political conclusions.

Even here, however, there is a good deal of complexity and contradiction. The Pandora's box of social issues—racism, gender violence, the death penalty—has now been opened wide. Even a series such as *Crime Stories* must at least express its awareness of and concern about these issues, even when its commentators manage to sabotage and distort their alleged concern through the use of the narrowing ideological lens allowed by the arena of the courtroom, and by the use of specific visual and dramatic conventions made possible by post-trial editing and commentary.

Thus, contradictions, complexities and generic norms notwithstanding, the general ideological slant of recent programming is more or less visible across genres, even as it waxes and wanes in emphases and explicitness from series to series and from genre and genre. For television, like all popular culture, is never as simply and simplymindedly monolithic as its most fervent critics, of both the left and right, often suggest. If it were, it would be far less intriguing—and certainly less powerful—than it is. Nor would we need books like this one to help us tease out its more confusing, if often beguilingly seductive, ways of playing with our hearts and minds.

Finally, in Part Three, I conclude with a summary and elaboration upon the major theme of the book: the criminalization of American life. For as everything that comes before will demonstrate, there is indeed a widespread national tendency to define and approach all social issues and problems within the narrow terrain of criminal law. And television—conveniently if not necessarily intentionally—has been, and continues to be, a useful handmaiden to those who have an interest in maintaining this broad consensus. Indeed, even as I write, such programming is proliferating more quickly than I can incorporate it, and there is no sign of its abatement in the near future. And so, in conclusion, I will look at the rise

and flowering of this trend and raise some questions about its problematic consequences. For in shifting to programming that favors punitive, often vengeful “solutions” to social problems in general, it turns us away from the larger, more complex, and difficult approaches to these problems in ways that are often self-defeating and certainly questionable in their social and moral implications.