

THE ACCUSERS

Law, Justice and the Image of Prosecutors in Hollywood

by Roger Berkowitz*

This essay begins with the observation that the American culture industry is nearly incapable of presenting state prosecutors in a positive light. Through readings of three apparent exceptions to this rule, the essay argues that prosecutors can only be heroically and positively conceived on screen when they abandon their traditional association with law and seek to do justice beyond the laws. To the extent that prosecutors can be seen as a proxy for the image of the ideal of legal justice itself, this essay argues that the imagining of prosecutorial justice in Hollywood shows that law has lost its once-assumed connection with justice.

Introduction: The Mysterious Case of the Invisible American Prosecutor

Countless cop action flicks show beleaguered police overcoming great odds to put the bad guys in their proper places. But somehow their partners in law enforcement, the public prosecutors, are virtually invisible in the history of American film. While police dramas romanticise law enforcement, the popularly conceived heroism associated with police does not carry over to prosecutors. On the contrary, prosecutors have been and remain one of Hollywood's most regularly scorned professions.¹ Indeed, it can be said with a surprising degree of confidence that Hollywood has not produced a single film in which prosecutors are either heroically or sympathetically portrayed in their everyday job of prosecuting and convicting criminals.²

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¹ Despite a growing interest in the images of lawyers and justice in popular culture, the villainy of prosecutors in Hollywood has not caught the eye of film critics or legal scholars. See generally, Sarat and Simon (2001), Sherwin (2001), Post (1987), Rosenberg (1994), Silbey (2002).

² This surprising claim is made on the basis of my own research and surveys of friends and colleagues carried out over the last three years. Further, among the 70 plus courtroom movies summarised in *Reel Justice: The Courtroom Goes to the Movies*, there is not one in which the prosecutor is heroically and positively portrayed. See Bergman and Asimow (1996). See also Denvir (1996). The rare exceptions to this rule, as will be discussed below, prove the rule; insofar as

One can comfortably say that the history of the portrayal of criminal lawyers in popular film and on television is one of fawning worship of the heroic defence attorney accompanied by, at best, a nearly complete elision of the prosecutor. The classic Hollywood criminal lawyer is Atticus Finch, the straight-talking defence lawyer in *To Kill a Mockingbird* who crosses racial lines in the South to defend Tom Robinson, a black man unjustly accused of raping a white woman. As an underdog who fights the principled fight against insurmountable odds, Atticus is the model for the legions of Hollywood defence lawyers who take on the system in the name of an innocent defendant.³

Against the ranks of Hollywood's famous defenders, the roster of Hollywood's prosecutorial team is largely anonymous. Who can name the prosecutors who faced down the likes of Gregory Peck's Atticus Finch (Gilmer — no first name given — played by William Windom in *To Kill a Mockingbird*), Raymond Burr's Perry Mason (District Attorney Hamilton Burger, played by William Tallman on the TV series *Perry Mason*), Orson Welles' Jonathan Wilk (Henry Horn, played by EG Marshall in *Compulsion*), and Joe Pesci's Vinny Gambino (Jim Trotter, played by Lane Smith in *My Cousin Vinny*)? While most of Hollywood's leading men have assumed the mantle of defending the accused against excessive, mean-spirited and arrogant prosecution, the role of prosecutor has been thankless.

More than simply being overshadowed by the defence, prosecutors are, at least in their Hollywood incarnations, widely disdained. They are frequently figured as little men, sometimes with almost feminine aspects, like Adam Bonner in *Adam's Rib*. Prosecutors are frequently well near invisible, as in *Witness for the Prosecution*, *Guilty as Sin* and *Reversal of Fortune*. Often prosecutors are presented on screen to be downright immoral, as are the district attorneys in *Presumed Innocent*, *Indictment: The McMartin Trial*, and *The Thin Blue Line*.⁴ Prosecutors are the legal actors Hollywood cannot learn to love.

prosecutors are portrayed heroically, they are figured non-traditionally either as defendants of victims' rights or as opponents of the state and the legal system.

³ Above and beyond the household names like Perry Mason and Atticus Finch, famous big-screen defenders include Paul Biegler (James Stewart, in *Anatomy of a Murder*), Henry Drummond (Spencer Tracy, in *Inherit the Wind*), Alan Dershowitz (Ron Silver, in *Reversal of Fortune*), Lt JG Daniel Kaffee (Tom Cruise, in *A Few Good Men*), Colonel Dax (Kirk Douglas, in *Paths of Glory*), Gareth Peirce (Emma Thompson, in *In the Name of the Father*), James Staphill (Christian Slater, in *Murder in the First*), Sandy Stern (Raul Julia, in *Presumed Innocent*), Jennifer Haines (Rebecca DeMornay, in *Guilty as Sin*), Arthur Kirkland (Al Pacino, in *... And Justice for All*), Kathleen Riley (Cher, in *Suspect*), and Sir Wilfrid Robarts (Charles Laughton, in *Witness for the Prosecution*).

⁴ Even in a film like *Judgment at Nuremberg*, where one might expect the prosecutor of Nazi judges to cut a sympathetic figure, Colonel Lawson (Richard Widmark) is not only a mere supporting role for Judge Dan Haywood (Spencer Tracy), but also is presented, in the end, as an overzealous agent of injustice.

Hollywood's allergy to prosecutors is in stark opposition to the actual standing of the profession. Real-life prosecutors are highly respected in the United States. Thomas E Dewey made his reputation as the mob-busting Manhattan district attorney in the 1930s, and parlayed his popularity into three terms as governor of New York and two runs for the White House.⁵ More recently, Rudy Giuliani won the mayoralty of New York after he became famous for his tough-nosed prosecution of Wall Street executives.⁶ Dewey and Giuliani are not exceptions; because many American prosecutors are popularly elected, they cultivate their fame, and many go on to serve as mayors, governors and Congressmen.⁷ Most importantly, as defenders of law and order against the violence of criminals, prosecutors are both populist and popular — often becoming 'media darlings'.⁸

On screen, however, prosecutors are not loved so much as they are feared. They are the often grim-faced bureaucrats of the legal system's cold machinery of punishment. They can and do mobilise vast resources and extraordinary power in the name of punishing — sometimes by death — overwhelmed and outmatched defendants. The film prosecutor, in other words, embodies all of America's worst fears about the imperious and unscrupulous power of the state.

Above all, Hollywood plays on the all-too-real fear that prosecutors will sacrifice justice to victory.⁹ The cinematic epitome of the zealous prosecutor is based on the real-life prosecutor Douglas Mulder. A Texas prosecutor who won the conviction of Randall Dale Adams for the murder of a police officer, Mulder is at the centre of Earl Morris's chilling documentary *The Thin Blue Line* — a tale of prosecutorial arrogance in which Mulder refuses to back down from his prosecution of Adams despite increasing evidence of Adams' innocence. As one attorney quoted in the documentary says of Mulder, and of a certain class of lawyers in general:

Any prosecutor can convict a guilty man. It takes a great prosecutor to convict an innocent man. To this day I think Mr. Mulder believes that the Randall Dale Adams conviction was one of his great victories, probably because of some reservations he has about Randall Dale Adams' guilt.

⁵ Stolberg (1995).

⁶ See Barbanel (1989).

⁷ On the long tradition of prosecutors using their popularity to launch a political career, see Glaberson (1990); Kenney (1996); and Barbanel (1989), see n. 6.

⁸ Fein (1993).

⁹ The fear is not entirely without ground. Bennett Gershman, a former prosecutor turned law professor, has said: 'I was a prosecutor for ten years. I think I know something of the mind-set here. For the American prosecutor, the system is war. They see it as a total abstraction. They're going to win that war, and it's combat to the death. They want the public to see the prosecutor as a warrior in combat.' (Gershman, 2000) See Baker (1999), p 78.

Like district attorney Kathryn Murphy in *The Accused*, the prosecutor is often so focused on winning that important but difficult cases are not advanced even as morally ambiguous yet winnable cases are pushed relentlessly.¹⁰ Importantly, *The Accused* too is based on a true story, which suggests that Hollywood's fear of prosecutorial injustice feeds upon widespread cultural discomfort.¹¹

Even taking into account the cultural fear of prosecutorial power, the negative image of on-screen prosecutors is both troubling and revealing. The job of the prosecutor is to enforce the law. Since prosecutors are the legal system's representatives of justice, Hollywood's antipathy towards prosecutors raises larger questions about the place of law in the doing of justice.

This essay explores the idea of justice embodied in Hollywood's prosecutorial ethic. To inquire into what Austin Sarat calls the 'cultural politics' of the representation of justice,¹² it turns to those exceptional films which seem to buck the trend and portray prosecutors in a positive, albeit refracted, light. The exceptions to the basic rule against heroic prosecutors are few, and largely involve prosecutors in extraordinary circumstances. For example, Rusty Sabich (Harrison Ford) is the beloved prosecutor in *Presumed Innocent*, yet Sabich ends up as a defendant subject to the ruthless and unprincipled prosecution of his nemesis, Nicco della Guardia.

Positive portrayals of prosecutors nearly always involve such a reversal, in which the prosecutor abandons (usually) his traditional role as the enforcer of laws. In *The Accused*, which will be discussed more fully below, a female and not surprisingly subversive prosecutor, Kathryn Murphy (Kelly McGillis), is initially seen as a typical prosecutor who cares only about winning cases and who accepts a plea bargain against men accused of gang-raping Sarah Tobias (Jodie Foster). It is only when Sarah has become incensed that Murphy has

¹⁰ See Gershman (1992), p 395 (suggesting that the modern prosecutors have vastly expanded powers with great potential for abuse).

¹¹ Animosity towards prosecutors is real, as these lyrics from 'God's Son' by rap singer Nas attest:

The D.A. who tried him was lyn
 A white dude, killed his mother durin' the case
 Hung jury, now the DA is bein' replaced
 Pre-trial hearin' is over, it's real for the soldier
 Walks in the courtroom, the look in his eyes is wild
 Triple-homicide, I sit in the back aisle
 I wanna crack a smile when I see him
 Throw up a fist for black power, cause all we want is his freedom
 He grabbed a court officer's gun and started squeezin'
 Then he grabbed the judge, screams out — nobody leavin' everybody
 'Get down, get down! Get down, get down!'

I thank Evan Rock for making me aware of this song. Lyrics transcribed from <http://ourlyrics.net>

¹² Sarat (2001), esp Ch 8.

taken the path of least resistance and denied her the opportunity to have her attackers punished that Murphy decides to bring another case against the onlookers who cheered on the rapists.

What distinguishes *Presumed Innocent* and *The Accused* from traditional presentations of prosecutors is that both Sabich and Murphy come to be more closely identified with the defence than with the prosecution. Neither is portrayed in the usual prosecutorial role of representing the state in a criminal proceeding against an accused criminal. Rather, Sabich is himself a defendant, and Murphy, through her passionate commitment to helping Sarah, comes to act more as Sarah's personal advocate than as a representative of the state.

The thesis of this essay is that film prosecutors are not seen as advocates of justice as long as they are portrayed primarily as agents of the law and the state. Rather, prosecutors can only be positively portrayed when they are defenders not of the public law of the state, but of a private sense of non-legal and non-state justice. In *The Accused*, for example, we only warm to Kathryn Murphy once her professional prosecutorial attitude is transformed by her private identification with Sarah Tobias's pain, as well as by her sympathy with her as a fellow woman. Similarly, the prosecutors in *Law & Order* blur the public-private divide by pursuing an ideal of justice that is marked by each prosecutor's intuitive and personal sense of right and wrong. As will be shown below, these examples suggest that the negative image of prosecutors in film results from the traditional identification of prosecutors with positivist state law, and specifically with a mechanical and unthinking reverence for the application and enforcement of the law.

The first section of this essay offers a reading of George Cukor's classic film, *Adam's Rib*. In the genre of Hollywood courtroom dramas, *Adam's Rib* is one of the rare (if not unique) examples of a heroic prosecutor who is affirmed in his basic task of enforcing the law against wrongdoers. The film seems, therefore, to be a classic presentation of a sympathetic and just prosecutor. However, as a comedy that lampoons the prosecutor even as it embraces him, Cukor's film ultimately raises questions about the very prosecutorial ethic it manifests — questions that go at least some of the way towards explaining the poor image enjoyed by prosecutors in popular culture. By relentlessly highlighting the artificiality of the prosecutorial ethic, *Adam's Rib* shows how the prosecutor's stubborn commitment to the application of the law is ultimately a flawed — albeit necessary — ideal of justice.

If the traditional prosecutorial ethic has proven unpalatable in Hollywood, Jonathan Kaplan's *The Accused* helped introduce a new prosecutorial ideal divorced from the law of the state — namely, the prosecutor comes to be celebrated as the victim's defender. The emphasis on the prosecutor's relationship to the victim is at the centre of *The Accused*; however, as suggested later in this paper, the rejection of the prosecutor's traditional role as the agent of state law is more important in characterising the shift in the ideal of prosecutorial justice.

The third section of the essay turns to the popular television series *Law & Order*. *Law & Order* is unique because it is potentially the only clear example of Hollywood-produced popular culture that unabashedly glorifies prosecutors

in their everyday job of prosecuting criminals. The prosecutors on *Law & Order* are not only not demonised, but they are also presented in some sense as modern heroes. What makes them heroic, however, is not their commitment to the law, but precisely their willingness to pursue justice in spite of the law. As in *The Accused*, the positive image of the prosecutor in large part depends on the dissociation of the prosecutor from his traditional association with the state and the law and his embrace, in its place, of a more tangible or commonsensical ideal of justice. The success of *Law & Order*, in other words, depends upon its embrace of an ideal of justice that is beyond the prosecutor's traditional interest in upholding the law.

Taken together, the films and television program discussed in this essay show that the prosecutor, at least in his traditional role as the agent of the people and the defender of the law, is not a person identified with justice in the popular imagination. Justice, in Hollywood, demands more than fidelity to the law.

Adam's Rib and the Prosecutorial Ethic

George Cukor's 1949 courtroom comedy *Adam's Rib* begins when Doris Attinger, a lonely housewife, attempts to kill her philandering husband. The case against her is assigned to Adam Bonner, a New York City assistant district attorney. In one of Hollywood's rare instances of awarding a main role to a prosecutor, Adam (played by Spencer Tracy) stands up for the simple justice of the enforcement of the law. The specific law at issue seems beyond assail. It says that if someone walks into an apartment and shoots another person, they are guilty of some crime. The prosecutor, the defender of the law against its violent breach, is the heroic embodiment of the people in their accusation against the criminal.

On one level, *Adam's Rib* can rightly be seen as the cinematic epitome of the prosecutorial ethic: all those who break the law deserve to be punished. In enforcing the law against those who violate it, prosecutors are society's warriors in the fight against crime and the effort to defend society against evil and disorder.

On another level, however, the prosecutor's identification with the justice of the social order is muddled by the presence of Amanda Bonner, Adam's wife. Amanda (played by Katharine Hepburn) is a successful criminal defence lawyer. Against Adam's earnest prosecution of the law, Amanda represents a more nuanced and ambiguous understanding of the relation between law and justice. Defending Mrs Attinger, Amanda argues that there is an 'unwritten law [that] stands back of a man who fights to defend his home'. Since men have the right to attack when provoked, women equally ought to enjoy that right; thus she demands that the jury 'apply this same [unwritten] law to this maltreated wife'. In effect, Amanda argues that justice must be expansive enough to include the basic emotional maxim that 'every living being is capable of attack if sufficiently provoked'. Doris Attinger is justified in doing what any other person, man or woman, also is justified in doing: lashing out to defend the sanctity of her home.

The legal and marital spat in *Adam's Rib* opposes two conceptions of justice. On the one side, Adam, the good prosecutor and defender of the plain and simple law, has little patience for the unwritten law. Like many cinematic prosecutors, Adam 'has a vested interest in the obvious';¹³ since Doris has broken the law, she must suffer her punishment. He is shocked and angered that Amanda is willing to sacrifice the sanctity of law. If the law is wrong, he counsels, change it — but don't tear it apart in the name of some cause.

The good of society, Adam implies, depends upon reverence for and strict application of the law. Early in the film when Amanda suggests the judgment of criminals might depend on whom they were accused of killing, Adam responds: 'Is that what they taught you at Yaaaaalle law school? That's not funny. Contempt for the law, you know, is the first thing ...' The first thing for what? His rebuke is cut short, but the theme of contempt for the law as well as Adam's defence of the law against Amanda's attacks returns throughout *Adam's Rib*.

The contempt theme continues in an argument Adam and Amanda have just before the end of the trial, and just after Adam has decided to move out and leave Amanda. Adam castigates his wife for her betrayal, both of himself and the law:

Contempt for the law, that's what you've got. It's a disease ... You think the law is something you can get over or get under or get around or just plain flaunt. You start with that and you wind up in the — well look at us. The law is the law, whether it's good or bad. If it's bad, the thing to do is to change it, not just to bust it wide open. You start with one law and pretty soon it's all laws, and pretty soon it's everything, and then it's me. You've got no respect for me, have you?

Adam's unbending (and, need one say, male) prosecutorial ethic — the law is the law, whether it's good or bad — makes his speech perhaps the greatest expression of the prosecutorial ethic in American popular culture. In a genre dominated by speeches given by defence lawyers decrying the injustice of the legal system and the partiality of prosecutors, Adam's speech is virtually singular in its almost naïve and patently straightforward appeal to the law as an unqualified social good. If there is a prosecutorial ethic that can carry some sympathy, it is Adam's mantra that the law is the law.

On the other side, Amanda questions the fairness of the equation of justice with law. In a society in which laws are written by men, the equal application of the law often leads to an injustice. Amanda's defence of Doris Attinger is designed, as she phrases it, to dramatise an injustice. Her defence is a protest against the injustice of the legal system, and the jury's acquittal of

¹³ See Brandon (1993), p 123. As Jay Brandon has observed with regard to the district attorney in *To Kill a Mockingbird*, Gilmer is 'so stuck in the obvious that he's blasé about it; he's easygoing, he chews on a straw during his cross-examination, he hangs a leg over the arm of the chair during his opposing counsel's final argument'. Brandon (1993), p 124.

Doris Attinger demonstrates the powerful appeal of her attack on the prosecutorial ethic.

In spite of the jury verdict, the prosecutorial ethic of *Adam's Rib* is reaffirmed in the film's dramatic climax. Although she has prevailed in court, Amanda is forlorn. At the height of her triumph, she has lost Adam and with him the legal and marital order upon which she ultimately depends. As Amanda and Kip, the Bonners' neighbour who flirts incessantly with Amanda, drink wine in Kip's apartment, Kip uses all his powers of persuasion to cajole a kiss. Amanda is oblivious to his sexual interest, and obsessed only with winning Adam back. Finally, just as Kip convinces Amanda to play-act a kiss, Adam — who had been watching from the street — bursts in wielding a gun. To Amanda's frenzied accusation that he has gone nutty, Adam throws Amanda's own words — from her courtroom summation — right back at her: he is perfectly normal and simply proving his capacity to act when provoked to defend his home. Amanda shrieks: 'Stop it Adam. Stop it! You've no right. You can't do what you're doing ... No one has a right to ...' At that, Adam puts the barrel of the licorice revolver in his mouth and bites it as Kip and Amanda scream. He smiles as he chews, ostensibly having taught her a lesson: 'I'll never forget that no matter what you think you think, you think the same as I think. That I have no right. That no one has a right to break the law. Your client had no right. That I'm right and you're wrong.'

While it seems that Adam's moral victory makes *Adam's Rib* into a classic reaffirmation of the prosecutorial ethic, it is significant that the good towards which the prosecutorial ethic aspires is never explicitly claimed to be justice. Instead of justice, *Adam's Rib* concerns the preservation of social order. This can be seen in the constant references to the fate of civilisation that run through the thematic centre of the film. Doris Attinger, for example, is portrayed as the insatiable woman threatening to devour civilisation. In the hours prior to her attempted murder, Doris eats. A petite and feminine woman, she inhales two rare hamburgers and a lemon meringue pie for lunch as she contemplates her crime. Afterwards, she stands outside her husband's office waiting for him to emerge, and consumes multiple chocolate and nut candy bars. And still her hunger is insatiable:

Doris: ... I went outside of his office and I waited the whole afternoon and I kept eatin' the candy bars and waitin' until he come out. And then I followed him, and then I shot him.

Amanda: And after you shot him, how did you feel then?

Doris: Hungry.

Doris's feminine hunger threatens to consume not simply her husband, but civilisation as well. Crime must be punished and the law reasserted, not in the name of justice, but as a bulwark against the consumptive passions that threaten all stable orderings.

Two decades have passed since Stanley Cavell's ground-breaking study of *Adam's Rib* as one of Hollywood's 'comedies of remarriage'.¹⁴ Cavell saw

¹⁴ Cavell (1981).

that *Adam's Rib* belonged to a genre of films in which marital crisis mirrored a more general crisis of civilisation. Marriage, as Adam lectures Amanda, is 'a contract, it's the law'. Cavell rightly observes that the marital contract 'names the social contract', so that the 'fate of the marriage bond in our genre is meant to epitomise the fate of the democratic social bond'.¹⁵ There is a corollary between the threat to marriage caused by Amanda's feminist demand for equality and the perceived threat to civilisation as well. As one of Adam's colleagues says: 'I got a theory, want to hear it? I think the human race is having a nervous breakdown.' While society's neurosis threatens to dissolve the Bonners' marriage as well, Adam and Amanda come back together again in the end, remarrying as it were. Their remarriage reaffirms the social contract, inclusive of the all-important 'little differences' between the sexes: As Adam exclaims, '*Vive la difference*'.

Cavell's reading of *Adam's Rib* rightly points out how Cukor rebukes Amanda for going too far in her revolutionary imagination. Yet, while Cukor is involved in the 'transfiguring of women, toward their creation and destruction',¹⁶ what needs to be seen as well is how men — and with them the law — are also the subjects of Cukor's transfigurative vision. Images of Adam with an apron, besmirched by lipstick and cooking, are pervasive. Kip, the piano-playing neighbour, is a sexually ambiguous character despite his attraction to Amanda (or maybe Amanda's own sexual ambiguity can explain Kip's obsession). Cukor's camera continually emphasises 'the feminine aspect of the masculine physiognomy',¹⁷ in a way that cannot but raise questions about the fate of man, just as the farcical trial scenes render suspect the film's moral reaffirmation of law and the prosecutors who enforce it as the foundation of society. Amanda's feminist challenge to Adam's social and legal worlds may be repelled, but the suspicion remains that Adam's is a pyrrhic victory.

Adam's Rib is not simply a movie about the deviation from and return to a societal standard. To understand how *Adam's Rib* undermines the very prosecutorial ethic it seems to embrace, it is only necessary to pay heed to the film's obsession with artificiality. The black and white sketched curtain that pulls back, literally, to open the movie, emphasises the artificiality of what is to follow. We are promised a film of a play, or a show within a show, and specifically a comedy. As the curtain raises, cartoon music plays as the camera focuses on a drawing of a courtroom. We see a cartoon-drawn male judge with bulging eyes and his chin resting on his hands. He sits in a pose of apparent resignation on a raised podium. Above him is a decidedly non-majestic parody of an eagle in a contorted pose. Below, and staring at him from both sides, are rows of male faces, Pinocchio-like beaked noses protruding with obvious phallic overtones, apparently a jury of his peers, looking somewhat blankly up at the judge who is covered in shadows. We have here a cartoon. Is man on trial? Is the law on trial? Or is civilisation itself being put on trial?

¹⁵ Cavell (1981), p 193.

¹⁶ Cavell (1981), p 221.

¹⁷ Cavell (1981), p 224.

The threat to civilisation is depicted as a threat to male and legal authority, and to the civilisation those authorities underlie. At the point in the movie, during a dinner party where Adam first learns that Amanda is going to be defending Doris Attinger and thus challenging his legal, marital and sexual authority, he turns over a silver platter of drinks he is carrying, toppling the wine-filled glasses. The action cuts abruptly to the Bonners and their guests watching a home movie. The title credits announce 'Bonner Epics present: 'The Mortgage the Merrier': A Too Real Epic'. It is an eight-millimetre film of Amanda and Adam at their Connecticut cottage, and it includes footage of them making their final mortgage payment. Within the movie, Adam and Amanda assume traditional gender roles that are decidedly absent from *Adam's Rib* itself. There is a repeated emphasis on 'custom'. Adam kisses Amanda, as is the custom. Adam is the one who pays the mortgage as his loyal wife (the real breadwinner in the family) stands by; he runs the barbecue grill; and he balances a hot dog on his upper lip as the mischievous moustached man. In the end, Adam shoves Amanda into the barn and looks devilishly into the camera, playing the role of the alpha male, winking as he follows her in for his final conquest — at which point the movie ends as the word 'Censored' flashes across the screen.

'The Mortgage the Merrier': A Too Real Epic' is a silent film, but its pictures speak volumes about the loss of the traditional authority of the real and male worlds. Kip narrates the film and constantly calls attention to its artificiality. 'Who took these pictures?' Kip bursts out at one point, and answers: 'Your cow?' Frames skip and jump, and the judge, who is watching his own performance handing over the mortgage to Adam and Amanda, announces: 'We acted this all out later of course — I mean its not actual.' The point is that this 'Too Real Epic' of marital bliss and stable sexual roles is decidedly not real. The focus on the unreality of the traditional marital epic that claims to be 'Too Real' angers Adam, who sits scowling through the entire screening. While we might imagine that Adam is still sore from learning that Amanda will be defending Mrs Attinger, it is hard to deny that part of his anger is aimed at Kip's — sexually ambiguous as he is — undoing of Adam's masculine triumphal narrative. And in case the point has been missed, when the film frames at one point turn upside down, Kip doesn't miss a beat in ordering everyone 'on your heads' as he does a headstand hammering home the inversion of the dominant narrative securing the 'real' world.

Not only the 'too real' world of the silent film within the film, but also the world of *Adam's Rib*, is infused with roles and artificiality. As a husband, prosecutor and man, Adam Bonner is always presented as playing a role, one that might be otherwise. The superficiality of roles is always apparent, especially in the ambiguous gender roles and gender-bending activities that pervade the movie. Amanda not only dresses and acts manly, but also her name contains the word 'man' and is even an anagram for 'an Adam' (hence the title). It is Amanda, not Adam, who drives the couple to work, it is Adam, not Amanda, who loses his temper and his cool in court, and it cannot be denied that Amanda, in her smart pants suits and cropped hair, has an austere air of masculinity about her. Is it an accident that the song Kip writes for her,

'Farewell Amanda', is sung with the emphasis on *Aman-da*, and that she is the object of Kip's homoerotic attractions? Adam is ultimately less of a man than he seems. His authority as a man, husband and prosecutor is shown to be contingent and tenuous, even as it is affirmed.

Law, in the person of the prosecutor, and marriage, in the person of the husband, converge as the pillars of society, but not without enduring such derision as to become almost laughable. And that is the point of the comedy. The foundations of society will be attacked and exposed, and yet, in the end, these same foundations will be reaffirmed. In the reaffirmation, however, one cannot expect that the institutions remain unscathed. Although civilisation is shown to depend on those roles, the roles themselves are exposed as fluid and open. The objectivity, power, simplicity and rationality of the prosecutorial ethic are continually put into question. Even as *Adam's Rib* seems to offer a rare example of a cinematic embrace of the prosecutorial ethic, it undermines that selfsame ethic through the relentless subversion of the essential attributes that comprise the prosecutor's claim to authority.

Can it be a coincidence that the single Hollywood movie which, at least apparently, embraces the prosecutorial ethic is so incessantly concerned with artificiality and the narrative construction of reality? Or, is it more likely that the emphasis on the prosecutor as neutered, as the precarious inhabitant of an endangered role, is, on one level, what allows Adam as a prosecutor to be presented sympathetically? It may be, in other words, that the cost *Adam's Rib* must pay for the rare endorsement of the prosecutorial ethic is a neurotic doubt regarding the prosecutor's authority. Behind the veil of a rehabilitation of the prosecutorial ethic, therefore, *Adam's Rib* harbours the suspicion that the prosecutor is never as innocent or as just as he seems.

From the State to the Victim: *The Accused* and the Emergence of the Prosecutor as Counsel for the Defence

If *Adam's Rib* presents and then complicates the traditional prosecutorial ethic, Jonathan Kaplan's 1988 courtroom drama, *The Accused*, takes a different approach to a positive image of a prosecutor. Forty years after *Adam's Rib*, *The Accused* did not defend the traditional prosecutorial ethic. Instead, it sought to transform the prosecutorial role itself. The prosecutor's traditional identification with the state and the impersonal machinery of power is jettisoned. In its place, *The Accused* imagines the prosecutor as the defender of the victim of the crime. Playing upon and in some ways prefiguring the recent movement for victims' rights, *The Accused* represents the prosecutor not as an agent of the state, but as the counsel for the victim. The prosecutor gains his sympathetic portrayal only once he is identified with a victim rather than the state. The prosecutor, in other words, must cease to be seen as a prosecutor.

Given the attempted transformation and personalisation of the prosecutor, it should be no surprise that the prosecutor in *The Accused* is a woman. Kathryn Murphy (Kelly McGillis) is the kinder, gentler and more feminine prosecutor, although she doesn't start out that way. *The Accused* is actually two movies in one, and also a tale of two prosecutors. In the first, Sarah Tobias (Jodie Foster) is gang-raped in a bar. Murphy, a crack prosecutor, is assigned

her case. While the evidence of rape is clear, Murphy is convinced that no jury will convict the three rapists. Sarah was drunk and stoned when the rape occurred; she flirted with her assailants; and she had a prior conviction for possession of cocaine. She will be seen, in the eyes of the jury, as a loose woman, someone who only gets what she asks for.

The themes of looseness and the victimisation of loose women are constant throughout the film. Sarah's dog is named Sadie and her licence plates and keys are emblazoned with the words *Sexy Sadie*, accompanied by the soundtrack of the Beatles track that is the movie's theme song:

Sexy Sadie you broke the rules
 You layed it down for all to see
 You layed it down for all to see
 Sexy Sadie oooh you broke the rules
 One sunny day the world was waiting for a lover
 She came along to turn on everyone
 Sexy Sadie the greatest of them all.
 ...
 Sexy Sadie you'll get yours yet
 However big you think you are
 However big you think you are
 Sexy Sadie oooh you'll get yours yet.

Murphy plays right into the societal stereotypes that figure Sarah as a transgressive woman who'll 'get yours yet', and refuses to bring Sarah's case to trial despite the encouragement of her male colleagues and boss.

Reflecting the image of prosecutors represented in most courtroom dramas, Murphy is obsessed with winning.¹⁸ She is so afraid of losing that she considers dropping the charges, despite her belief that the accused rapists are guilty. She is also a woman trying to fit into a man's world. At a hockey game over beers and hot dogs with grunts and adrenaline of male testosterone in the background, Murphy explains and defends her decision not to prosecute to her boss and colleagues:

Murphy: If I take it to trial they'll destroy her. She walked in there alone, she got drunk, she got stoned, she came on to them. She's got a prior for possession.

Chief DA: That's inadmissible.

Murphy: Sure it's inadmissible. But they'll ask her about it. I'll object, the judge will sustain it, but the jury will hear it. She's a sitting duck.

As her boss gently reminds her, Murphy appears to be so afraid of losing that she doesn't want to risk doing what is right:

Chief: I read her Q&A. Gang-rape on a pinball machine. It's an ugly case.

Murphy: The question is: is it a winnable case?

¹⁸ See, for example, Baker (1999).

Chief: Kathryn, we understand that you love to win, but I can't let you dismiss this because you don't have a lock.'

Murphy: Lock, I don't have a case.

...

Chief: Well, Kathryn, do you believe she was raped?

Murphy: Yes, but I can't win it.

This exchange is typical of courtroom dramas that reflect the basic prejudice that prosecutors care more about winning and advancing their careers than doing justice.¹⁹ Murphy is hesitant to prosecute not because she believes that to do so would be unjust, but because she risks losing and sullyng her perfect trial record. Even the chief district attorney who insists that Murphy make a deal seems to be concerned more with securing the formalities of a gaol sentence than doing justice. It is an 'ugly case', and yet there is no sense that the prosecutors will pursue justice that requires the perpetrators to be punished commensurately with their wrong. Practical concerns induce the district attorneys to press for a plea bargain in which the accused rapists plead guilty to a lesser crime in return for a lighter gaol sentence. In the end, Murphy does indeed present a strong enough case to the defendants that she convinces them to plead guilty, albeit to the non-sexual crime of reckless endangerment instead of rape.

In the first part of *The Accused*, Murphy embodies the traditional image of the prosecutor as an aloof public servant. In her discussions with her colleagues, there is little revulsion at the crime and almost no emotion. She is doing a job. Further, there is no concern with Sarah, the rape victim. Sarah is, for Murphy, merely a problem. Sarah's sordid past makes her a bad witness, one the jury is not likely to believe. As a result, Murphy largely ignores her, and doesn't consult Sarah about her decision to offer the defendants a plea bargain. Sarah hears about the deal on the TV news. She also hears the announcer repeat unnamed sources from the defence implying that she was a slut and saying that she wouldn't make a good witness.

Enraged, Sarah barges into Murphy's home. She struts in dressed in a leather jacket and baseball jersey. Murphy is in the midst of throwing a dinner party; in front of the buttoned-down guests, Sarah curses Murphy: 'You double-crossing bitch, you sold me out.' Giving voice to many of the concerns of the modern victim's rights movement, Sarah shouts:

Sarah: So I didn't get raped? Huh. I never got raped?

Murphy: Of course you got raped.

Sarah: Then how come it doesn't say that? How come it doesn't say Sarah Tobias was raped. What the FUCK is reckless endangerment?

Murphy: It's a felony that carries the same prison term as rape. Now you asked me to put them away and that's exactly what I did.

Sarah: Who the hell are you to decide that I ain't good enough to be a witness?

¹⁹ For many prosecutors, the trial is like a war that must be won at all costs. See note 9; Gershman (2000).

Sarah's confrontation of Murphy is the turning point in the film, the point when Sarah goes from being the victim to the accused; it is also the point when Murphy comes under *The Accused's* accusatory glare for her bureaucratic and unemotional treatment of Sarah as a victim.²⁰ Accused by the film, and newly aware of Sarah's fragile victimhood, Murphy is transformed from the prosecutor doing her job as the representative of the state to an emotionally involved attorney inspired to protect and defend Sarah.

Murphy, in other words, shifts from prosecuting the rapists for breaking the law to defending and advocating for Sarah. Although still technically acting as a prosecutor, Murphy now works to protect Sarah from the slights and hurts, not of her assailants, but of the social and legal institutions that had failed her. So complete is the emotional transition from public prosecutor to private advocate that the promotional blurb for *The Accused* printed on the back cover of the video version identifies Murphy as Sarah's lawyer. The prosecutor only comes to be seen sympathetically once she abandons her public role of prosecuting criminals on behalf of the people and assumes an emotional attachment to the victim *qua* accused.

The Accused derives some of its power from the fact that it is loosely based on the trial and conviction of three men for gang raping a 22-year-old mother of two on a pool table in a bar. While Hollywood could not stomach a movie about the gang rape of a mother, Sarah is nevertheless a woman marked by physical and emotional vulnerability. In spite of Sarah's drinking, drug use and other personal faults, she is — as Murphy reminds her defence lawyer adversaries — tiny and vulnerable, heart-wrenchingly so in Foster's inspired portrayal.

Even more than relying on the relative truth of the story or Sarah's vulnerability, however, the success of *The Accused* rests upon Sarah, the victim of the rape, coming to be seen as the accused. In posters and advertisements for the film and on the box of the videotape, Sarah Tobias's horror-stricken face peers out under the title: *The Accused*. At once the victim and the accused, Sarah Tobias has been raped and yet she stands accused. She is, throughout the movie, determined to defend herself and her reputation. So complete is the inversion of accuser and accused that Sarah repeatedly pleads with prosecutor Kathryn Murphy to do a better job defending her.

Sarah's transformation from victim to accused is, consequently, accompanied by a similar transformation in Murphy from traditional prosecutor of criminals to quasi-defender of victims. What Sarah wants, above all else, is a chance to tell her story, to testify to the horror of her rape and have it publicly acknowledged.²¹ While the rule against double jeopardy forbids reopening the case against the three rapists, Murphy comes up with a plan to prosecute the onlookers in the bar who had cheered and encouraged the rape as conspirators in the rape. By doing so, she will give to Sarah what she wants: 'Sarah,' she says, 'I made a mistake. Before I agreed to the deal I should have

²⁰ I thank Austin Sarat for alerting me to this latter point.

²¹ See generally, Foucault (1988).

offered you the choice of going to trial and testifying. I can offer that to you now.'

In order to *defend* Sarah from the implicit accusation of her unworthiness, Murphy invents a novel legal strategy that allows her to prosecute the onlookers for criminal conspiracy. Her boss at first refuses to sanction the prosecution strategy, and when he presses Murphy as to why she is so intent on her plan, she responds that she owes it to Sarah:

Murphy: We owe her.

Chief DA: Owe her what? We put the rapists away.

Murphy: I owe her.

Chief DA: Christ. You want to spend my money to put a bunch of spectators on trial. A trial you'll lose, because YOU owe her. NO! You don't get to use this office to pay your debts.

Murphy: I am going to try this case and you're not going to stop me.

Murphy does indeed try the onlookers and wins, but what is important within *The Accused* is less that the men tried are punished than that Sarah has the opportunity to testify and redeem herself. The trial, typically a forum for the determination of guilt and punishment, is transformed into a moment of personal growth and triumph where Sarah, assisted by Murphy, succeeds in publicly attesting to her rape.

Although McGillis's portrayal of a prosecutor is certainly central to the film, *The Accused* mimics defence-oriented courtroom movies in its focus on a solitary victim of the legal system. Having been failed by the legal system, Sarah, in the second half of the film, undergoes a transformation. She breaks up with her abusive boyfriend, cuts her hair short and begins to gain confidence and poise. Through the act of standing up for herself, she grows and matures. *The Accused* is Sarah's story, and Murphy gleans her prosecutorial luster from Sarah. The positive presentation of the prosecutor emerges only when Murphy rejects her traditional identification with the state and its legal system and embraces a victim instead.

Law & Order and the Emergence of the Embattled Prosecutor

Against the grain of Hollywood's usual contempt or neglect of prosecutors, *Adam's Rib* and *The Accused* present positive images of prosecutors, albeit in importantly different ways. While Adam Bonner embraces a traditional prosecutorial ethic that envisions the prosecutor as a neutral bureaucrat representing public legality against the intrusions of wrongdoers, Kathryn Murphy only warms to her role once she adopts the cause of Sarah Tobias, the victim of a brutal gang rape. If the former earns his respect by honourably protecting the nobility of law, the latter wins hearts by forcing law to serve the emotional needs of victims. In the distance between the two lies a tale not only of the rehabilitation of the prosecutor's image, but the transformation of the ideal of justice.

It is the change in Hollywood's image of justice that makes possible *The Accused's* heroic presentation of a prosecutor. Only once prosecutors can be

seen as representatives of the victims against the societal and systemic powers that be can they break the monopoly defence attorneys currently hold on Hollywood. And the identification of prosecutors with the underdogs and with the victims requires, in turn, a more personal and emotional conception of justice than the traditional prosecutorial ethic pictured in *Adam's Rib*.

Confirmation of the shift both in the popular image of prosecutors and the popular idea of justice is found in the hit television series *Law & Order*. While not a film, *Law & Order* is Hollywood fare that deserves mention here, at least partly because it is an immensely popular show in which prosecutors occupy some of the leading roles. More importantly, however, *Law & Order* follows *The Accused* in breaking from the traditional presentation of the prosecutorial ethic and endorsing a more personal ideal of justice.

The personal idea of justice in *Law & Order* reflects, at times, the same concern with the victims of crime evidenced in *The Accused*. In the 'White Rabbit' episode, for example, the lead prosecutor considers offering a plea bargain to a former 1960s radical who 30 years earlier had been involved in the death of a policeman. Before he can do so, however, the officer's widow, Mary Perella, confronts him: 'I'm Mary Perella. I understand you got one of the people who murdered my husband.' At this point Ms Perella shows the prosecutor, Jack McCoy (Sam Waterston), a posterboard picture of her dead husband: 'This is Officer Vincent J Perella. I wanted you to see him before you make any deals.' While *Law & Order* never adopts the victim's perspective as fully as did *The Accused*, the prosecutor's responsibility to crime victims is a constant theme.

However, the personal ideal of justice imagined by the prosecutors on *Law & Order* is evidenced not only through an embrace of victims' rights, but also through the pursuit of a subjectively defined non-legal sense of justice. If the traditional prosecutorial ethic is Adam Bonner's mantra, 'the law is the law', then Ben Stone (Michael Moriarty), the original lead district attorney on *Law & Order*, espouses a prosecutorial ethic that justice is something more than the law. He fights his legal battles to ensure that the law shouldn't stand in the way of justice. The *Law & Order* prosecutors, as Dawn Keetley has pointed out, are separated from the law rather than subsumed to it.²² Ben Stone, Jack McCoy and their assistants 'consistently express their own views of the morality of the people they try'.²³ Theirs is a personal, commonsense brand of folk justice that comes to be embodied by the prosecutors themselves. Justice is not the enforcement of public state-made laws by a state attorney, but rather the pursuit of criminals and punishment in line with the prosecutor's subjective gut instinct regarding the basic questions of right and wrong.

The result of this first-person pursuit of justice means that the prosecutors on *Law & Order* are seen most frequently not as enforcers of the law, but as opponents of the law in the name of an imagined version of the moral order. Just as Amanda Bonner sought to oppose the implementation of law that would lead to the doing of an injustice, the prosecutors on *Law & Order* are

²² Keetley (1988), pp 41-42.

²³ Keetley (1988), p 43.

guided by an ideal of justice that is explicitly differentiated from Adam Bonner's prosecutorial ethic. However, while Amanda Bonner's opposition to the law was conceived as a protest, Ben Stone succeeds in incorporating her critical approach to law into his own prosecutorial approach.

For Stone, the doing of justice may include a commitment to law; just as frequently, however, law is portrayed as the obstacle to justice. The prosecutors frequently bump up against procedural laws meant to protect defendants, but these procedures rarely stand in the way of doing what is deemed right: 'While sometimes the realities of the law defeat their attempts to convict those they consider guilty, more often they are able to negotiate (sometimes very inventively) the tangled web of laws in order to punish those whom they have *already decided* are guilty.'²⁴ The prosecutors on *Law & Order* are wonderfully adept at skirting the procedural technicalities that might otherwise allow morally guilty criminals to escape punishment.

Against Hollywood's common image of lethargic prosecutors who are simple-minded in their resolve to punish lawbreakers, the prosecutors on *Law & Order* are anything but straightforward servants of the law. Instead, as Keetley argues, they represent the commonsense vision of moral justice: 'On *Law & Order*, the beliefs and values of the lawyers take precedence over the abstractions of the law.'²⁵ It is this shift in the idea of justice away from law and towards a subjectively defined ideal of order that unites *Law & Order* with *The Accused* and reflects a new and increasingly powerful prosecutorial ethic.

Law & Order's dissociation of prosecutors from law begins during the introductory montage that opens each episode. 'In the criminal justice system,' a voice intones, 'the people are represented by two separate yet equally important groups. The police who investigate crime, and the district attorneys who prosecute offenders. These are their stories.' The one-hour show is divided into two parts that mirror the title, *Law & Order*. The first segment follows two detectives as they investigate a crime. After a criminal is arrested, the prosecutors take over. Importantly, it is the police whom the show imagines as the representatives of the law. During the opening footage, the detectives are presented following the word 'LAW' writ large across the screen, and the prosecutors are introduced following an image of the word 'ORDER'. This assignment of the police to the law and the prosecutors to order is intentional, and reaffirmed by the show's distinction between law (the detectives) and order (the prosecutors) reflected in the credits.²⁶ The distinction between law and order is also important to *Law & Order's* thematisation of justice. The identification of prosecutors with order allows them both to avoid their traditional image as bureaucratic servants of the state's law and to lay claim to a new and more positively charged role. The prosecutors, in other words, are no longer representatives of the law. Rather, they represent

²⁴ Keetley (1988).

²⁵ Keetley (1988).

²⁶ See the credits listed on the box of the *Law & Order* collectors' edition videotape. On file with author.

something larger than law, an idea of social order grounded in the announcement and pursuit of a particular and personal morality.

In pursuing justice distinct from the legal order, the prosecutors on *Law & Order* seduce their audience to an ideal of order beyond the law. In the episode 'Indifference', for example, Ben Stone stakes out a prosecutorial position grounded in his own moral sentiments regarding the two defendants, Carla and Dr Jacob Lowenstein. Based on the true story of the now-famous Steinberg child-abuse case, 'Indifference' deals with a case of child abuse in a dysfunctional family. Dr Lowenstein is a Reichian psychoanalyst who incorporates sexual and narcotic practices into his psychoanalytic treatments. He is also abusive toward his wife and, it is suggested, sexually interested in his daughter. When his daughter dies in school from wounds that clearly came from either Carla or Jacob, Stone decides to charge both parents with second-degree murder. His original rationale is that a joint trial will ensure that one of the two must be found guilty.

However, after testimony quickly shows that it was Carla who actually landed the blows that killed her daughter, Stone does not want to dismiss the charges against Jacob. It turns out that, while Carla may have inflicted the deadly blows, she too was a victim of Jacob's psychological and physical torture. In a meeting with Adam Schiff, the chief district attorney, Stone explains his reasons for wanting to offer Carla a plea bargain in order to convict Jacob. Far from points of law, Stone's motivation is rooted, as he himself characterises it, within his own moral rage at the person of Jacob Lowenstein:

Ben Stone: She [Carla Lowenstein] did it Adam. That's not my problem. One way or another, that woman hit her daughter.

Adam Schiff: Then what is your problem? Perez's testimony destroyed her ...

Stone: The whole thing is unfathomable. I feel like I'm floating face down with a mile of black water between me and any reasonable explanation for this.

Schiff: Why does it have to be reasonable?

Stone: Well, there's something else going on here. It's not her. It's him. There's something depraved.

Schiff: Alright. What bothers you the most about this?

Stone: Well, um ... My own rage.

Schiff: What do your guts tell you?

Stone: Put 'em both in the dungeon. Put 'em on the wheel, and annihilate 'em.

Schiff: Can you get to him through her?

Stone: I think so.

Schiff: Alright then, do it. If you think he is the greater evil, you go for him where he's most vulnerable. You make the deal.

It is Stone's personal rage founded upon his moral conviction that 'there's something depraved' about Jacob Lowenstein that drives his decision to mitigate Carla's sentence in return for her help in convicting Jacob. While in no way illegal, Stone's decision is importantly non-legal. His boss tells him to

go with his 'gut', and he is led, as in most *Law & Order* episodes, by an emotional response to seek his own personal sense of justice.

It is the image of prosecutor going with his gut that comes to represent the ideal of justice on *Law & Order*. Justice is an intuitive and subjective feeling of moral conviction rather than the cold and calculating enforcement of the law that more typically constitutes the image of prosecutors in public culture. *Law & Order*, as with *The Accused* and even *Adam's Rib*, imagines an ideal of justice that is largely divorced from the state and the state's law.

Conclusion

This essay has argued that Hollywood's disdain for and dismissal of prosecutors reflects an important and often overlooked cultural suspicion of statist and legalistic ideals of justice. Prosecutors suffer in movies and on television, in other words, as a result of their close association with what may be called the prosecutorial ethic — namely, that all those who break the law ought to be punished by the state. Far from ennobling prosecutors, the law taints those very legal actors charged with actively carrying out its commands in the name of the state. It is only when prosecutors disassociate themselves from their traditional role as enforcers of law and become instead the guardians of an endangered social order that they can be seen as sympathetic and heroic figures. The essence of justice, Hollywood tells us, is not the prosecution of law, but the defence of order.

To take seriously the cultural imagination of prosecutorial justice as the extra-legal protection of order is to raise serious questions about the value of legality. The reign of legality (what Max Weber referred to as '*die legale Herrschaft*') reflects the modern belief that justice has no independent existence outside of the laws.²⁷ The essential attribute of legality is its capacity to govern 'in accord with calculable rules, *nach berechenbaren Regeln*'.²⁸ Legality enables law to operate with a mechanical perfection that guarantees the equal treatment of all persons. Moreover, the rules of law are valid whatever their relation to morality or justice. As Weber writes, 'any law (*beliebiges Recht*) can be posited through rational pacts or imposition ... with the claim of being respected.'²⁹ Law reduced to legality is severed from its foundation in justice and becomes, in Weber's famous characterisation, an 'iron cage'.³⁰ Instead of justice, the legality that girds the prosecutorial ethic aims for rule-bound certainty.

It should come as little surprise that, faced with the 'bureaucratic servitude' ('*Herrenlose Sklaverei*') of the laws, Hollywood at once excoriates law-bound prosecutors and romanticises their heroic counterpart, the legal actor who sets his personal moral discretion above the law. In doing so, cinema and television prosecutors show up the limits of the naïve understanding of the prosecutor as the bureaucratic enforcer of laws. In its place, they offer the

²⁷ Weber (1980), pp 124–25.

²⁸ Weber (1980), pp 562–63.

²⁹ Weber (1980), pp 124–25.

³⁰ Weber (2001), p 123 (*Stahlhart Gehäuse*).

image of the ideal prosecutor as the protector of the moral conscience of the romantic community.

It would be a mistake, however, to interpret the idealisation of social order in *Law & Order* and in *The Accused* with a privileging of individual justice over an undifferentiated legality. The endorsement of victims' rights in *The Accused* and the 'gut' justice of *Law & Order* appeal to the most common of passions amongst their audience, the yearnings for revenge and uncritical self-affirmation. Hollywood's romantic turn from rules of law to fantasies of order has less to do with justice than with the endorsement of an imagined and unproblematic communal ethos.

Against such reactive fantasies, justice demands, as Nietzsche writes, 'an objectivity' in the face of personal injury, degradation and suspicion that 'is high, clear, and as deep as it is mild'.³¹ Such an objectivity, however, is not objectivity as it is commonly understood — objectivity as 'cold, measured, strange, indifferent'.³² On the contrary, the kind of objectivity that justice demands is a 'positive comportment', one that 'directs,' 'forces' and gives 'substance and measure' to persons and events at which it is directed.³³ The truly just man does not take vengeance or seek the comfort of a romanticised communal order. Instead, he takes the scales of justice in his hands and proclaims, in the imperative. The truly just man, Nietzsche writes:

wills truth not as only a cold and ineffective knowledge, but rather as the ordering and punishing queen of judgment — truth not as an egoistic possession of the individual, but as the holy right to unhinge all boundary stones of egoistic possession; truth, in a word, as the universal court and thus not as the seized treasure and pleasure of the individual hunter.³⁴

Justice is not cold, but is fired by passion. The warmth of truth beyond egoism is, as thinkers from Aristotle to Nietzsche have known, the camaraderie of friendship. In friendship either with oneself or others, each friend is an end unto himself. It is only through friendship that a space amongst different persons opens 'where man can find shelter from the claims of technical rationality, and indeed from calculative thinking in general, including even *phronesis* (practical judgment)'.³⁵ Friendship, in other words, is the necessary foundation for justice.

Justice understood as the rational imperative of friendship stands opposed to all sociological conceptions of justice that derive law 'from the principles of justice, fairness and procedural due process that provide the best constructive interpretation of the *community's legal practice*'.³⁶ For contemporary legal

³¹ Nietzsche (1993), p 310.

³² Nietzsche (1993), p 310.

³³ Nietzsche (1993), pp 310–11.

³⁴ Nietzsche (1988), pp 286–87.

³⁵ Nonet (2002), p 65; *phronesis* is written in Greek characters in the original.

³⁶ Dworkin (1986), p 225 (emphasis added).

theorists, as much as for Hollywood's cultural purveyors, law and justice are firmly rooted in social conventions and the existing cultural understandings of social justice — reduced either to existing laws or the popular opinion of common sense. Justice, in other words, increasingly means nothing more than the protection and preservation of a culturally existing idea of order, based either on a statist legality or a romantic imagined community. In the end, Hollywood's imagination of prosecutorial justice offers a stark choice between the bureaucratic enslavement to a system of legality and the heroic enforcer of the social order. While Hollywood's defence lawyers can — and sometimes do — fight for justice as a legal ideal, prosecutors can only pursue justice severed from law. What is lost in such a choice, however, is the ideal of a prosecutor and the law itself as an agent of justice.

What it would mean for prosecutors (or law) to pursue justice founded upon friendship, as opposed to either a statist legality or a romantic communitarianism, is of course difficult to articulate. Whether such a *reign of justice* is even possible in an age in which justice and truth are treated with ever more suspicion and incredulity is an open question. While it is likely that no exercise of human will can restore justice to her rightful place on the throne of law,³⁷ it is possible, at least, to seek to hold open the space for justice. Insofar as Hollywood's engagement with law reminds us that justice exists above and beyond the laws, modern cinema holds out the promise of justice against legality. The escape from legality, however, comes at a high price. What is overlooked in the cinematic dialectic between legality and romanticism is the possibility of legal justice itself.

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³⁷ See Nonet (2002), p 60.

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