

## *Celebrity as Authority in Law*

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### I

#### INTRODUCTION

**Y**EARS AGO STEWART Macauley encouraged us to look outside the courts to find law. Recently such an orientation has come to characterise work that is identified with Law and Society.<sup>1</sup> During the annual meeting of scholars operating from this framework in Budapest scholars considered various aspects of social life affected by and affecting law. The aspect of celebrity, which we think is important to law, received relatively little attention. Few papers were given directly on celebrity (if we don't count celebrity academics like Bentham, Selznick and Bourdieu);<sup>2</sup> in spite of the fact that the theme of the conference was 'law in action' and an important influence was cultural studies.<sup>3</sup> There were sessions that drew on celebrity indirectly. The work of the cartoonist *Felix*, a popular source in Hungary buttressed an argument about the challenges of Eastern European law in transition.<sup>4</sup> There was a session on the book *When Law Goes Pop*, by Richard Sherwin<sup>5</sup> and there were papers dealing with movies and popular culture.<sup>6</sup> The overwhelming majority of the work, however, was about law professors, judges, legislators, statutes and court opinions. While there

<sup>1</sup> S. Macauley, 'Non-Contractual Relations in Business: A Preliminary Study,' (1963) *American Sociological Review* 28; See also David Papke 'How Does Law Look in the Movies; 27 *Legal studies forum* 439 (2003); Austin Sarat, 'The Law is All Over,' Power, Resistance, and the Legal Consciousness of the welfare poor, *Make Journal of Law and the Humanities*, vol.2, No.2.

<sup>2</sup> P. Robson's 'Notions of Justice in the Films of Sidney Lumet' and A. Howe's 'Lindy Chamberlain: Trial by Sex, Circumstance, and Opinion' are exceptions, Annual Meeting of the Law and Society Association, Budapest, 2001.

<sup>3</sup> Cultural studies scholarship is important in Law and Society and cultural studies is nearly obsessed with celebrity.

<sup>4</sup> See A. Sajo, 'Encounters in Law,' Annual Meeting of the Law and Society Association, Budapest, 2001.

<sup>5</sup> *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture* (Chicago and London, University of Chicago Press, 2000).

<sup>6</sup> See A. Sarat, 'Constructing Memories of Pain: Remembrance and Revenge in *Unforgiven*' Annual Meeting of the Law and Society Association, Budapest, 2001.

is considerable sensitivity to the idea that we might look to other parts of the culture for insight about law, celebrity is being treated by socio-legal scholars as peripheral to law and the academic discussion of it.<sup>7</sup> We propose that legal authority, while obviously associated with texts and the knowledge held by lawyers as to what a judge will do, is also a function of cultural forces, including celebrities traditionally thought to be outside the law.

This essay examines the extent to which celebrity has been incorporated into the contemporary system of legal authority. Recognition of the general social tendency toward the cultural authority of celebrity is evident in the work of Lawrence Friedman. He observed

‘... celebrities have displaced other role models. When people (especially young people) adopt idols today, these idols come from the world of celebrities, rather from the world of traditional authority.’<sup>8</sup>

We find evidence in legal scholarship and cultural commentary suggesting that this idea is gaining currency. We think displacement may be a bit extreme, at least with regard to law, but, in matters like search and seizures, marriage, assault or discrimination celebrities contribute to what we know to be the law. In this regard, we propose that it is important to incorporate celebrity into our picture of law.<sup>9</sup>

We work from the perspective called ‘law in society’ which has, in the last 30 years, expanded what scholars know to be law. Further, we develop a constitutive understanding of the authority behind law.<sup>10</sup> When we say a celebrity has authority in law we mean that what she or he proposes or exemplifies is, under certain circumstances, the law. That it means what law means to significant portions of the population. This form of authority is meant to operate in a fashion similar to, if not identical with, what judges or prosecutors contend that law means. By including the authority of celebrity in law we follow a shift in attention from institutional sources per se to cultural sources of law. When Oprah, for example, calls attention to the suffering of a battered wife her view has the authority to alter or

<sup>7</sup> Celebrity within the academy plays a role in this understanding with figures like Ronald Dworkin, Carol Gilligan and Angela Davis having special status as celebrity intellectuals. See PW Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago & London, University of Chicago Press, 1999).

<sup>8</sup> Eriedman, *The Horizontal Society* (Yale University Press, 1999): 35.

<sup>9</sup> ‘To misunderstand the role of the popular media is to ignore the fact that the “major contemporary political issues” of today (environmental, ethnic and sexual youth movements, for instance) all arose outside the traditional public sphere. Instead of being generated through intellectual, social or political elites, they were “informed, shaped, developed and contested within the privatized public sphere of suburban media consumerism”’: J Hartley, *Popular Reality: Journalism, Modernity, Popular Culture* (London and New York, Arnold, 1996) p 157, as quoted in G Turner, F Bonner, and PD Marshall, *Fame Games: the Production of Celebrity in Australia* (Cambridge University Press, 2000) 7.

<sup>10</sup> J Brigham, *The Constitution of Interests: Beyond the Politics of Rights* (NYU Press, 1996).

reinforce public perception of battery. We acknowledge that this authority may not be determinative of legal meaning so we say it 'has authority' rather than that it is 'authoritative.'

We are not simply adding celebrity to the array of judges, lawyers and enforcement personnel who tell us what the law is. We contend that the authority of law is accurately understood as a function of many authorities; few, perhaps none of whom ultimately determine legal meaning on their own. Scholars, for instance, play a role in law reviews and teaching, to help determine what is law. Officials, like the clerks of courts,<sup>11</sup> are seen as determining in practice what counts as law even though their authority is suspect. More starkly, clerks at Kinkos will tell you that you can't Xerox money and that you have to clear copyright to make multiple copies of material. Celebrities have a place in this process precisely because we do not wish to treat meaning in law as if there is law, or legal production, and then comment on it by outsiders.

We wish to take on conventional notions of where law comes from. Though not official, the reporting of news sources is the law for most people. Gap studies such as those by McCann and Haltom have provided an accounting of the ways we can go wrong with the popular press as a source of law. Papers, even those as prestigious as *The New York Times*, clearly have their biases and slants. We don't wish to trivialise the production of law so that we say that law is no more than whatever we know. Yet, at some point law depends on how we interpret and internalise, perceive and understand a segment of the social rules. The law we are interested in has a social reality. It is in society. Celebrities significantly influence this law. Clearly only some knowledge is knowledge of law and there are hierarchies of understanding. Many people in the United States sincerely believe that they have 'a right to do whatever they want in their own home' at least until held accountable for some transgression of the law, like domestic violence. We want to base this study on the intuitive claim that what they believe to be the law is law until their view is successfully challenged or a reconceptualisation takes place.

One recent development that suggests the importance of celebrity in law is a shift in the perspective of news and other cultural constructions. There is a new self consciousness that moves reporting from claiming a detached knowledge about the world, claiming to stand outside, to knowledge or news presented from within. As Graeme Turner and his colleagues have argued,

'Coverage of celebrities within news and current affairs is widely cited as evidence of a decline in *hard* news values, the ascendancy of infotainment, and the decline of the press as an independent source of information.'<sup>12</sup>

<sup>11</sup> B Yngvesson, *Virtuous Citizens, Disruptive Subjects* (Routledge, 1993).

<sup>12</sup> Turner *et al* 2000 above n 9 at 5.

We accept this formulation that media is ‘fundamentally participating in the cultural construction’ of society<sup>13</sup> and in the process forming opinion and making law. In the socio-legal field, as in the social sciences more generally, the issue of identity and identity formation has been a concern that features mutually constitutive processes. This is our formulation of the interconnectedness one finds in law and society.<sup>14</sup> Our study of celebrity status in law is consistent with this concern. We draw attention to law as a social formation that resides in identity and society.

## II

### CELEBRITY STATUS

By celebrities we mean people who are widely known. Clint Eastwood is a celebrity as is Madonna. We accept a version of the Turner definition coming out of cultural studies that ‘... anyone the public is interested in is a celebrity.’<sup>15</sup> This is the same definition Friedman uses when he says, ‘the essence of celebrity is high visibility’.<sup>16</sup> A plumber may be a celebrity if he wins the lottery, performs some heroic deed or becomes a figure in a popular text whether television, movies, literature or advertising. A plumber on *Survivor* could become a celebrity. A plumber could not become a celebrity for simply being an extraordinary plumber unless she is an extraordinary plumber who gets employed to a home makeover show on television. In this sense, celebrities are famous. Some of the issues that arise from this minimal definition are considered here.

We think that it is important to note that celebrities come from various fields. Like law, this is a broad category. Entertainment and sports are sources of celebrity. Politics is another source. Business is not, generally a source of celebrity, though of course there are exceptions like media mogul Ted Turner. Generally it means visibility across a wide spectrum of national or international life. Celebrity status is consequently linked to spheres of influence. Eastwood and Madonna are known beyond the United States. Kylie Minogue and Slim Dusty have long been celebrities in Australia and were not known much beyond the boundaries of that nation (though Minogue’s status changed in 2002). We focus on celebrity status that at least rises to the level of the nation.

While we are primarily interested in influences on national law, some of the most important celebrity influences are transnational. Spanish students are said to have known the law on search and seizure from watching television in the United States. This phenomenon is often discussed with the

<sup>13</sup> Turner *et al* 2000 above n 9 at 6.

<sup>14</sup> S Hall: *Critical Dialogues in Cultural Studies*, edited by K-H Chan and D Mortey (London, Routledge, 1996).

<sup>15</sup> Turner *et al* 2000 above n 9 at 9.

<sup>16</sup> (Friedman 1999 above n 8 at 27.

emphasis on how silly or paradoxical the resulting knowledge turns out to be. In a case where a Spanish citizen quotes Andy Sipowicz from *NYPD Blue* to a member of the Guardia Civil we share a concern for the welfare of the Spaniard marshalling his American television knowledge. Yet, what seems trivial and at a superficial level begins to make more sense as we look closely at both law and celebrity to understand their constitutive relation.

Like law, the status of celebrity crosses the boundaries of groups. What is claimed for both law and celebrity transcends the pluralism of interests and issues. Celebrity and law are statuses that unite individuals into groups and groups into cultures. By their nature they are synthetic. The synthesis has many different meanings and kinds of cultural significance. For Turner and his colleagues, 'the celebrity is at their most active and significant when they mark a point of convergence' or, as Marshall puts it, when they can provide 'a bridge of meaning between the powerless and the powerful.'<sup>17</sup> Celebrity in this sense is political, even transformative, at least at the level of identity. Without focusing here on the political dimension, the wide recognition and consequences for group identity are clearly phenomena that involve power that is relevant to various groups, classes and society. The tension over this boundary crossing is evident with Jennifer Lopez or Tiger Woods. Jennifer Lopez justifies the word 'Nigger' in her song as incorporating a pariah category as blacks do. Part of Woods' celebrity, in addition to the fact that he is remarkably good at golf, is the fact that he is of mixed race and a person of color dominating a country club sport. In this, the contradictions as well as the range add to his celebrity rather than detracting, as they might with regard to other types of social capital. All of these examples address the boundary crossing that is at the basis of legal authority.

Scholars have proposed that the status of celebrity in contemporary cultures of the sort we are focusing on is new.<sup>18</sup> Our concern is to establish that this authority is an authority in law. We think that recognition of celebrity authority in this sense, as law, is new. Lawrence Friedman emphasizes the ordinary quality of modern celebrities and our familiarity with their lives. This is part of his analysis of 'horizontal societies'.<sup>19</sup> He says 'It is precisely the illusion of familiarity—the images, the show, the projection on the public screen that makes the celebrity what she is.'<sup>20</sup> This is an important

<sup>17</sup> Above n 12, Bonnes *et al* 2000 at 12; D Marshall, *Celebrity and Power: Fame in Contemporary Culture* (University of Minnesota Press, 1997), at 124.

<sup>18</sup> Nick Bromell, in *Tomorrow Never Knows: Rock and Psychedelics in the 1960s* (University of Chicago Press, 2001) 26 describes pop celebrities' 'appealing mix of authority, vulnerability, and trustworthiness' as 'something very new to American culture.'

<sup>19</sup> 'The vast audience has the illusion of a peep show: what goes on behind the scenes is revealed before their very eyes. Instead of fairy tales we have tabloids ... in which the characters are rich but ordinary, leading lives drenched in romance and scandal yet almost obsessively mundane ... Talent, luck, or tragedy or chance has anointed them. Yet at the base, there is something amazingly ordinary about them.' Above n 8 Friedman 1999 at 29.

<sup>20</sup> *Ibid.*

argument and one of the features that determines the nature of celebrity influence in law. Celebrity, like law, penetrates the everyday aspects of life in the United States and other industrial nations. Of course, celebrities are not really ordinary or we wouldn't be interested in them. What Friedman calls the 'paradox'<sup>21</sup> of difference and sameness creates a complicated and various dynamic as the heart of both the psychology of consciousness about social norms and the mechanisms of legal authority.

Scholars from Ernst Kantorowicz, Michael Rogin and Sheldon Wolin<sup>22</sup> to Stuart Hall and Michel Foucault, link ordinary people to celebrities through the governing structure. Kantorowicz, Rogin and Wolin explored the monarchical corollary between the body of the King and the body politic in which a sense of the sameness was part of the King's authority and the clarity of succession based on blood relations. For Hall and Foucault, the modern structure of authority has replaced the body and blood with the market and media culture as the place where the way we live is delineated. Rogin's work is an important link. His insight about the celebrity character that emerged as Ronald Reagan, the President may be extended to other aspects of the governing authority. The capacity to know, in an ordinary sense, and be 'in awe' at the same time is an element of legal authority.

Since the celebrity does not 'speak an arcane, elitist language' Friedman suggests that the 'fixity' of traditional authority has vanished.<sup>23</sup> In this sense his is an updated 'realist' formulation but one with a romantic view of the 'tradition' in law. For some time now the authority of law has been in the institutional structures rather than in the words of the practitioners.<sup>24</sup> The real meaning of the notion that the law is 'what the judge says it is' involves a shift from the texts of law to the actors in important institutions. We don't believe, at least in the societies we are talking about, that the authority of law has become weak and fluid to the point of lacking authority. Rather, the penetration of celebrity life and famous stories into the consciousness of citizens brings law home, or into the home. This penetration makes law part of identity and consciousness. Law understood in this way is anything but lacking in 'fixity'. The penetration and to a great extent the rigidity of law—at least when measured against a notion that anything goes—appears to be substantial. Indeed, the controversy, in March of 2003, over the Dixie Chicks saying they are embarrassed to come from the same state as American President George W Bush indicates one kind of consequence. Celebrity trials like that of Robert Blake in the same period indicate other, very real, consequences.

<sup>21</sup> *Ibid* at 35.

<sup>22</sup> EH Kantorowicz, *The King's Two Bodies* (Princeton, Princeton University Press, 1957); M Rogin, *Ronald Reagan, the Movie* (Berkeley University of California Press, 1987) S Wolin, 'The People's Two Bodies' (1981) 1 *Democracy* 11–19.

<sup>23</sup> Friedman 1999 at 35.

<sup>24</sup> J Brigham, *The Cult of the Court* (Philadelphia, Temple University Press, 1987).

Timothy McVeigh became a celebrity as have many other famous criminals. McVeigh was internationally famous given the nature of his crime and his punishment. His status was partly due to his own effort, the magnitude of his crime, but it is also a function of the government's response. This was the case with Bonnie Parker and Clyde Barrow, bandits in the 1930s. Their celebrity was considerably enhanced and brought to a new generation by the movie made by Arthur Penn of their lives in the 1960s. In McVeigh's case a relatively traditional social background from the United States presented a puzzle when interpreting his crime and punishment. He became a celebrity for being condemned to death and being ordinary. Oprah Winfrey's celebrity is also ordinary in shape but extraordinary in magnitude. Oprah seems to be influential in matters of social policy like the home and family. With her book club she extended her influence to art and literature.

People in the United States are familiar with the influence of celebrities in matters of policy. These run from Barbra Streisand supporting the Clinton Presidency and *Selena* star Edward James Olmos condemning police behavior in Los Angeles or supporting various Hispanic community causes to Charlton Heston symbolically heading the National Rifle Association in the United States and Ronald Reagan, Clint Eastwood and Sonny Bono holding public office.<sup>25</sup> The meaning and influence varies. Celebrities are highly visible in matters of social convention that have a policy dimension but around which there is a social consensus about what is good and what is bad such as divorce, domestic violence, and drinking driving. We think that the authority of celebrity is greatest and most closely associated with law where a social consensus adheres. For instance, we are used to celebrity commentary on drugs or driving while intoxicated but much less used to commentary on the status of private property or even the value of social security. This phenomenon is heightened in time of war with grave risks to the celebrity who opposes even a relatively unpopular war.

We think that political leaders are a special case. National presidents become celebrities by virtue of their office in most of the world. In addition, JFK and Ronald Reagan were celebrity Presidents. As political leaders, JFK and Ronald Reagan derived authority from their celebrity. Their celebrity status overlapped with the authority they got from institutional sources. Scholars believe that the Civil Rights Bill of 1964 in the United States would not have been passed if it has not been for the stature JFK achieved in death. The techniques Ronald Reagan learned as a celebrity entertainer clearly helped him to enhance his image as President. Bill Clinton had celebrity status as President, as an interesting personality and in his association with well known figures.

Celebrity is a relatively unstable condition compared to what we expect of authority in law. Indeed, in the lore of Anglo-American law terms like

<sup>25</sup> See July 2001 regarding struggle over oil reserves in Alaska.

precedent and stare decisis affirm the importance of positions that endure in spite of controversy.<sup>26</sup> Though not simply dependent on the marketplace, celebrity is clearly a function of markets and other volatile social forces. Commentary on an issue, a relatively passive stance, can threaten celebrity status. Ralph Nader, who became much more of a celebrity due to his run for President in 2000, seems to have diminished in significance since then. Even simply getting caught in the networks of social approbation can threaten the status of a celebrity. This is true as when mistakes are made by celebrities, such as those by George Michael in a bathroom in LA, Hugh Grant with a prostitute, or Winona Ryder shoplifting.

There are dangers to celebrity when in conflict with the law or even its ideological underpinnings. Thus, the homophobic lyrics of white rapper Eminem were both vehicle and limitation to be transcended. For basketball player rapper Alan Iverson an outlaw image is part of the celebrity and it is acceptable up to a point. Though perhaps acting out of some destructive urge, in their involvement with the law, Michael, Grant and Ryder did not seem to be in control and their celebrity status was clearly in jeopardy. Here, marginal figures, like Snoop Doggy Dog and Eminem who have a following may be able to maintain their position in society consequent to clashes with the law but Sean Coombs, though once identified with the gangster image was starting a line of clothes when his trouble with the law seemed to escalate and at least some of the outlets for his clothes seem to have become squeamish after he appeared in court. The Dixie Chicks, in a comment mocking the President of the United States on the eve of war with Iraq in 2003, seem to have risked the loyalties of their core 'country' audience.

Celebrity status is a complex social quality embedded in culture and consequently linked to law. Celebrities are not totally in control of the messages they send. The message can be counter to what an individual celebrity might intend or desire, as in the case of Hugh Grant's soliciting a prostitute. The image may endure after a celebrity has died or fallen from public consciousness. Charlie Chaplin was a celebrity whose views on Fascism, like those of Ezra Pound, caused considerable controversy. They remain legends whose status is partly affected by their identification with a discredited ideology. They may or may not take credit for their influence. They may or may not be consistent in their positions. Manu Chao the former leader of the rock band Mano Negra and son of refugees from the Spanish Civil War who had fled to France sings of the immigrant and identifies with the under class in albums like *Clandestino*. Consequently, his recording contract with the international corporation Virgin Records generated considerable criticism. His response was that he is 'not trying to rewrite the laws, just to sing.' This is an attempt to evade accountability that belies the relationship

<sup>26</sup> The status of celebrity is vulnerable to a degree that is greater than some other status relations, like parenthood or sainthood, particularly when it comes to involvement with law.

we are suggesting. In fact, the issue of rebellion and counter hegemonic material is particularly important to understanding the relationship between celebrity and legal authority. One of the issues in this important relationship is the role of corporations in defining and often sanitising the views of celebrities they market. But of even greater consequence is the link between powerful business enterprises and law. It is far easier to get the recorded product from Virgin Records about Manu Chao than it was from his less prominent and more idiosyncratic sources. One of the characteristics of law is the scope of authority.

Celebrity calls attention to the social quality of authority in law. A lawyer or other member of the law enforcement community can of course become a celebrity, like Johnny Cochran of OJ Simpson fame. We presume that celebrities of this sort may have even more authority than celebrities in other areas when it comes to being sources of law. Thus, the realm to which a celebrity is associated influences his or her authority in law. Similarly, celebrities entering the realm of law, whether fictional or not, may have significant legal authority. Clint Eastwood, as the character *Dirty Harry*, became associated with toughness on crime. He provided a cultural mechanism for identifying with the state as an inadequate force for law and order. The character resisted the conventions of public authority with the consent of the viewers. Philip Gourevitch's book, *We wish to inform you that tomorrow we will be killed with our families: Stories From Rwanda*, makes this point in discussing the movies 'A Time to Kill' and 'Sleepers'.

[In] A Time to Kill ... A couple of worthless white-trash rednecks are out drinking and driving. They abduct a young black girl, rape her, torture her, and leave her corpse in a field ... The girl's father doesn't trust the local judiciary to do adequate justice, so he waits for the men to be brought in chains to the courthouse, steps out of the shadows with a shotgun, and blows them away ... [In] Sleepers ... kids play a prank that results in the accidental death of a passerby. They are sent to a reform school, where they are repeatedly gang raped by wardens. Then they are released. Years pass. One day, two of the original quartet encounter the warden who had been the chief tormentor in reform school, so they draw their handguns and blow him away ...

As summarised by Gourevitch the shared premise is that 'the law and the courts were so incapable of fairly adjudicating the cases in question that it wasn't worth bothering with them'.<sup>27</sup> This is the level at which we find it useful to associate law with celebrity.

Princess Diana was, technically, a figure in the state apparatus as Princess. But she did not seem closely linked to what we conventionally

<sup>27</sup> See also, 'Both movies were quite popular in America seen by many millions of citizens ...' and 'Still, I was troubled by the premise the two movies shared: that the law and the courts were so incapable of fairly adjudicating the cases in question that it wasn't worth bothering with them' at 343: P Gourevitch, *We wish to inform you...* (USA, Picador, 1999) 342-3.

think of as law. Yet, upon her death it became clear that she was associated with the identity and authority of sovereign power in England. Perhaps even more important than her policy interests in the campaign against land mines and for the rights of AIDS patients in which her compassion was a powerful cultural statement her death symbolised the deep identification of people across class and even nationality with glamour and style. And the continuing authority of that style has been sought actively to be associated with the monarchy since her death.

A celebrity judge is a tricky category in a discussion of celebrity and law. Judge Ito in OJ Simpson's criminal trial became a familiar example of a judge. He influenced perception of what it means to be a judge and to be Japanese American. Thus, a race not traditionally associated with judging in America became associated with the most prominent jurist of his time. Ito was certainly a celebrity Japanese American. As a celebrity judge all of the authority he had was initially through the law in the traditional, non-celebrity sense. His influence on the trial on the other hand was a function in part of his own celebrity and that of the trial. Ito had what we are calling authority over his court as he heard arguments and set the tone for the proceedings. When former Senator Alphonse D'Amato of New York joked about Ito being Japanese the judge was reduced to a symbol of discrimination against Asian Americans. Subsequently, dissatisfaction with the acquittal became associated with what commentators claimed was Judge Ito's inability to control the trial. In becoming one of the celebrities associated with an unpopular trial his authority over law generally diminished while his significance as an example of the pitfalls of celebrity in law may have grown.

The actors are more clearly what we understand by celebrity. They will be the sort of celebrities to which we turn in contending that television and radio as well as academic and popular intellectual sources contribute to the meaning of civil and criminal codes, judicial and administrative authority, and notions about who we ought to obey. For most cultural activity that is driven by law, the action and opinion of celebrities play a significant role that is more important than academic and intellectuals have recognised. It may be more important in practice than the contributions of many legal actors to the development of the law. We are asking when and how celebrities that we see in tabloids and entertainment TV make law.

### III

#### CELEBRITY AS A KIND OF AUTHORITY

Authority in law is not simply about judges anymore. The interpretive forms have been expanded from lawyers and judges to the character of social life more generally. John Brigham has discussed this shift as being

from the courts as temples of justice to television.<sup>28</sup> In the sociology of law today, Susan Silbey and Patti Ewick explore the architecture of authority in their work about scientific laboratories.<sup>29</sup> Socio-legal scholars considering the capacity of the nation-state to direct the conduct of global corporate power, call attention to the constitutive legislation that starts corporations on their journey and the control of financial and securities markets.<sup>30</sup>

We don't think that there is a simple link between celebrity and traditional legal authority. Instead, we want to suggest new ways in which politics, law and public relations converge in how society is ordered today. The homophobic commentaries of Eminem and Allen Iverson were subsumed in a public relations onslaught by the music and basketball communities, which moderated the lyrics and cushioned their impact. Celebrity stature and law are worked out in a public realm as arcane in its workings as anything in the fabled legal systems of the past or the fables of Kafka. Celebrity, like legal authority, requires a place in public consciousness. Legislation does not simply need the support of the public to pass, sometimes it does and sometimes it doesn't, but legislation needs the knowledge of the public to be authoritative, to operate from consent rather than armed force.

Here we explore the overlap and interpenetration between celebrity and law emphasising the ways in which celebrity operates as authority. Max Weber taught us to consider various sources of law.<sup>31</sup> His traditional authority called to mind pre-modern cultures where custom and norm were relatively stable. He wrote of the rational-legal as the characteristic form of modern societies operating under the rule of law and he introduced the charismatic to delineate the power of personal presence over how people chose to act. The notion of celebrity as authority that we would like to develop here necessarily modifies the framework. It falls somewhere in between Weber's idea of rational-legal authority and charismatic authority. In fact, we argue that the more charismatic aspect of celebrity authority has entered into and perhaps altered, at least relative to Weber's perspective, the nature of rational-legal authority. Yet, Weber's social analysis, in adding a component of cultural and ideological phenomena to how we understand society, is a foundational perspective for this work.

<sup>28</sup> John Brigham, 'Law and Humanities: Symposium on the Image of Law (yers) in Popular Culture': *Syracuse Law Review* (2003) 58: 1165–1199.

<sup>29</sup> P Ewick and SS Silbey, 'The Architecture of Authority,' *The Law and Society Meetings*, Budapest, 2001.

<sup>30</sup> JW Cioffi, 'Governing Globalization? The State, Law, and Structural Change in Corporate Governance' (2000) 27 *Journal of Law and Society* 572.

<sup>31</sup> Traditional, Rational-Legal and Charismatic. M Weber, *Basic Concepts in Sociology* (Tr. By HP Seder) (NY, Citadel Press, 1921/1968); HH Gerth and C Wright Mills *From Max Weber*, (NY, Bedminster Press, 1946/1959). See also C Boulanger, 'The Charisma of Law: Max Weber's Relevance for Understanding Institutional Change' Annual Meeting of the Law and Society Association, Budapest, 2001.

Friedman makes a point to distinguish a celebrity from an authority.<sup>32</sup> In his formulation, ‘a celebrity is someone we know, or think we know, through the media, through publicity, that is, vicariously.’<sup>33</sup> This vicarious knowledge is a key to what Friedman calls the ‘horizontal’ relation he sees in society. He perceives this relation as not what it ‘seems’ to the participants. According to Friedman, people think that they have a relationship with celebrities but they do not really. We propose that Friedman is only partially correct here and that the horizontal relation that makes us think we know Ronald Reagan, ‘Dutch’, as a nice guy or Julia Roberts as a good kid is part of who they are. They are people that millions of us ‘know’ and as such they are celebrities. It does not seem to be significant that in some sense we do not ‘really’ know them. That is, it may be true that we do not know them as we know our parents or lovers but that does not make our familiarity false, it simply makes it part of the contemporary nature of celebrity.<sup>34</sup> Celebrities become authorities out of this relation and saying that the familiarity we feel is false is minimally relevant to the study of celebrity. It is as if we said of the authority of Moses that it was wrong for the Israelites to see him as a father figure because he was really not the father of them all. The authority of law in traditional terms is often much like the authority of celebrity that depends on familiarity. Much like Stuart Scheingold in *The Politics of Rights* we suggest that the perception of closeness is a key to the authority of celebrity.

It is essential to recognise the authority of celebrity to understand modern law. Some of this may well require recognition of a greater fluidity in law, as already noted. But we are not sure this characteristic is essential or even necessarily characteristic. We don’t argue that all the certainty in law has vanished. Indeed, the very ordinary quality of celebrity status is a huge constraint. It influences how celebrities appear and the impact they have on law. While it may seem unsettling to think that internationally acclaimed death row inmate Mumia Abu-Jamal along with pop singer Madonna and Supreme Court Justice David Souter all represent sources of law, it seems to be true. We do not provide a basis for assessing which of these sources is the most influential but rather suggest that jurisprudence must include them all.<sup>35</sup> It would seem that Abu-Jamal, convicted in Philadelphia of killing a policeman and an international symbol of the political and racial problems associated with the death penalty as it is practiced in America, is unsettling to traditional legal authority. To the extent that ‘the law’ includes the fact

<sup>32</sup> ‘... the difference between a ‘celebrity’ and an ‘authority’ is fundamental’ above n 8, Friedman 1999 at 15.

<sup>33</sup> *Ibid.*

<sup>34</sup> M Rogin, *Ronald Reagan, the Movie* (Berkeley, University of California Press, 1988). Last year Julia Roberts, who had been sitting behind my son Atticus in a New York movie theater, reached down and touched his shoulder with a kind of awareness of her celebrity and its ordinariness that she explored in *Notting Hill*.

<sup>35</sup> In some theories of constitutional interpretation the rise in significance of judges is unsettling to a notion that the law is in the text.

of capital punishment in Pennsylvania, Abu-Jamal reminds us of its problems and presents a real threat to the idea that those convicted under it deserve their fate. Part of 'the law' is the fact that the death penalty is disproportionately applied to people of color in America, especially at the federal level, and in Abu-Jamal's celebrity may be disruptive for that practice. It is at this point of disruption or effectiveness that the role of celebrity is of interest to this study. David Souter, as a Justice of the United States Supreme Court may or may not comment on Abu-Jamal's case in his official capacity. If he does it will be an important source of law. Madonna, in the course of her career, has commented on race and the death penalty and though she seems unlikely to comment on Mumia in an interview or as part of a performance it is not highly unlikely and that comment would be a source of law.

Sometimes the relationship between celebrity and law is tense and conflictual. Judges impose gag orders in order to keep defendants from becoming celebrities along the lines of Billy Sol Estes, one of the first televised trials.<sup>36</sup> The argument is that to celebrate and publicise a trial may deprive a defendant of due process. Defendants who start as celebrities affect the aspiration that jurors are impartial and their celebrity alters the character of the trial as we have learned from trials like that of OJ Simpson, Winona Ryder and Robert Blake. Juries have said that potential martyrdom, a form of celebrity, influenced their choice of punishment.<sup>37</sup> Convicted celebrities have to be segregated in prison for fear that their status might provoke attacks<sup>38</sup> understood by prison officials as an aspiration for celebrity on the part of the attacker.<sup>39</sup> Some forms of law actively resist full participation in the market. The Supreme Court in refusing to televise its oral arguments is opting for a traditional form of authority based in the text and the discourse. The justices may be successful in maintaining their niche by resisting the market. For most practitioners, to be known requires marketing or the cultivation of celebrity.

Authority is more than simply influence. Authority entails, at least to some degree, the capacity to compel. All celebrities, because they are known, become part of the way we perceive the world so we say they have influence to the extent that, in their opinions and actions we find standards for our beliefs and behavior. As in the case of law, we think that compulsion of the sort that orders people to behave a certain way is not the foundation of legal authority. More often law constitutes behaviors as expected

<sup>36</sup> One of the first states to allow televised trials was Texas. This policy led to televised coverage of the 1962 trial of Billy Sol Estes. It was also the basis for Estes' appeal to the United States Supreme Court. A majority (5-4) of the Court's Justices overturned Estes' conviction. *Estes v Texas*, (1965) 381 US 532.

<sup>37</sup> Mentioned with regard to Oklahoma City accomplice Terry Nichols in June 2001.

<sup>38</sup> Such an attack by a white supremacist on John Walker Lindh, 'The American Taliban,' was reported to have taken place at a medium security prison in California in March of 2003.

<sup>39</sup> As described to me by a guard at Folsom Prison with regard to the segregation of Erik Menendez in the Spring of 2000.

or normal so that to do otherwise would be nearly unthinkable. It is at this level that we believe celebrity compels.

There are instances in the academy, where celebrity is examined in ways that bear on it being a kind of authority. In a paper at the Budapest conference, the movie *Saving Private Ryan* became a familiar way to introduce issues surrounding the laws of war in the paper 'Trying Private Ryan: The Prosecution of Grave Breaches of the Laws of War in the Shadow of the International Criminal Court'.<sup>40</sup> Because of their familiarity, movies and the well-known actors that appear in them provide a kind of rhetorical authority. In the above case, when 'Saving' becomes 'Trying,' the turn of phrase is meant to evoke a familiar nod to the cleverness of the author and the familiarity of the issue. We find images and references from popular culture applied to law because they have a special resonance as recurring parts of our life. For instance, Rob McQueen's reference to 'Carl Schmitt for Corporate Lawyers: Liberalism and the Corporate Governance Debate,'<sup>41</sup> takes its form from the series of books heralding access to various techniques '... for Dummies' and Carl Schmitt himself has an academic currency that gives it a celebrity form.<sup>42</sup> Celebrity cases, both trial and appellate, have special status for scholars because others are more likely to know about them.

There are cases where the plaintiff or the defendant becomes something of a celebrity and they are treated in the media as standing in for law in a way that tells us about the meaning of celebrity. William Haltom and Michael W McCann have been working on the case of a woman who became famous because she successfully sued McDonald's when she spilled very hot coffee on herself.<sup>43</sup> Knowledge of the case and its initially large settlement, they feel, places undue emphasis on high damage awards and contributes to the backlash against civil liability.

#### IV

#### CELEBRITY LEGAL PRACTICE

The oak tree of the English legal landscape becomes central to Eve Darian Smith's thesis that the channel tunnel has transformed the English psyche. Looking at *The Golden Bough* of Malcolm Frasier, Darian-Smith explores

<sup>40</sup> W Bradford, 'Trying Private Ryan: The Prosecution of Grave Breaches of the Laws of War in the Shadow of the International Criminal Court' Annual Meeting of the Law and Society Association, Budapest, 2001.

<sup>41</sup> Annual Meeting of the Law and Society Association, Budapest, 2001.

<sup>42</sup> Schmitt's celebrity at the moment seems to come from a continuing concern about the conditions in early 20th Century Germany that produced such an aggressive society.

<sup>43</sup> W Haltom and MW McCann, 'Java Jive: Liebeck v McDonald's as Media Icon' Annual Meeting of the Law and Society Association, Budapest, 2001; LH Carter, 'Reconstructing Impartiality After *Bush v Gore*' Annual Meeting of the Law and Society Association, Budapest, 2001.

the image of the garden as a reference for the order in law. In contemporary culture the television is a similar place. When we turn on TV to spend time with Oprah, the Simpsons or the evening news we are going to a place from which we come to know things about law.<sup>44</sup>

One of the things we take from TV and other celebrity outlets is a sense of how to feel about law. In particular we learn to trust or not trust police or courts,<sup>45</sup> formulate notions through sitcoms such as *Ally McBeal* as to what it is like to be a lawyer and we learn to identify with the victim or perhaps even the defendant. In her article, 'The Oprah Dilemma,' Kathy Laster begins with a quote from Oprah to establish the significance of our recent elevation of the victim to iconic status in Western law.<sup>46</sup>

The centrality of law in rap or hip-hop is the sort of case that makes the issue of celebrities and law compelling. Sean 'Puffy' or 'P Diddy' Coombs' widely chronicled encounters with the law become morality plays in the public arena. On the one hand the relatively flamboyant flaunting of law in the music supports the story told by the police that Coombs fired a gun he was carrying in response to criticism from a fan at a nightclub in New York City. His defense in court however, contrary to his public message was that he did not have a gun. He was acquitted but on the basis of a very ungangster line. He lost his girlfriend at the time, Jennifer Lopez, whose celebrity began to surpass his and in a subsequent arrest for a traffic violation he (not to be confused with J Lo) was made to look foolish while contending that he was being harassed.<sup>47</sup> Clearly this is an arena in which celebrity and law clash and in shifting from the celebrity persona to that of defendant the authority of state law over rap image is affirmed.

In examining the contested space of law, white rapper Eminem's homophobic lyrics provide an important example. Challenging anti discrimination law while appealing to the discriminatory sensibilities of many People in the United States, Eminem's nomination for multiple Grammy Awards in 2000 drew attention to his performance. The producers of the show turned the evening into a restatement of the general norm of toleration. Eminem sang with Elton John who is publicly gay. The law that subsumed Eminem and his lyrics was the tolerance of the recording industry, the

<sup>44</sup> See also J Brigham 'Architectures of Justice,' in R Mohr, (1999) 1 *Journal of Social Change and Critical Inquiry* J Brigham, 'LA Law' 21–33 in Jarvis and Joseph (eds), *Prime Time Law*, (Carolina Academic Press 1998 21–33); 'Exploring the Attic: Courts and Communities in Material Life', *Special Issue of Law in Context on Courts, Tribunals and New Approaches to Justice* O Mendelsohn and L Maher (eds) (Bundoora Australia, La Trobe University Press 1994) 131–155.

<sup>45</sup> See JL Hoffmann, 'The Confounding of Procedure and Substance: The Liebman Study and the Future of the Death Penalty in the United States' Annual Meeting of the Law and Society Association, Budapest, 2001.

<sup>46</sup> K Laster and E Erez, 'The Oprah Dilemma: the Use and Abuse of Victims' Annual Meeting of the Law and Society Association, Budapest, 2001.

<sup>47</sup> Coombs' decision to change his name to P Diddy has suffered from as well as potentially being a manifestation of diminished celebrity. Conversations on this point with Natalie Meyers have been suggestive.

same tolerance that is so important to freedom of expression. In this example the lyrics of one artist become subordinate to something larger and the celebrity source of law is not the individual but the production.

In reconsidering events like those surrounding Sean Coombs, George Michael and Hugh Grant, brushes with the law where celebrity and the legal system of courts and police interact, there is no simple correlation. While neither Coombs nor Michael seem to have gained significantly from their arrests and the publicity around their transgressions, neither have they fallen entirely. Michael as a sex symbol among teen girls may have suffered but perhaps the range of meaning we associate with homosexuality may have expanded as it did when it became public that Rock Hudson was gay.

We have suggested that the authority of celebrity is multi dimensional. The law operates on celebrities and they contribute to how we know law. The influence is no more necessarily intended than the violations of law that play such a crucial role in linking celebrity and law. We simply wish to approach law so as to provide for a multi linear exchange of meanings. The issue of authority is at least partly a function of visibility, credibility and marketability. To say that celebrity is authoritative would from time to time include celebrities saying 'this is the law' but far more often it would mean that how we understand the world in terms of celebrity would be an aspect of law. Sean Coombs submitting to court while his gangster music decries the authority of the courts is one type of meaning. OJ Simpson submitting but essentially beating the system is another. Both are examples of how the law is interactive with social forces.<sup>48</sup> Thus, it is not simply normativity that we have been describing. It is not simply views of right and wrong but of the law. George Michael being arrested for homosexual activity in a public bathroom sends messages about behavior and the power of police. It is part of how we know homosexuality, enforcing traditional views of surreptitious and seedy activity.

The influence of celebrities is greater in the less technical aspects of law. Thus, the authority of Dennis Franz, who plays Detective Sipowitz on *NYPD Blue*, is more evident with regard to the public perception we have about the authority of police than it seems likely to be in matters of police discipline such as the power of internal affairs divisions to subpoena records in their investigation. Similarly, we would expect Oprah, Larry Springer or Bill Moyers to contribute to how we feel about environmental pollution, divorce or even human rights laws but not a provision of the tax code that requires owners of real property to establish trust relations in order to liquidate their holdings.

Crimes such as the killing of seven year old Megan Kanka in New Jersey produce law. In this case, the murder and rape produced a national victim's rights movement 'Parents for Megan's Law, Inc.' that has been responsible

<sup>48</sup> There is a correlation between market-economy forces of commodification which celebrities exemplify and the law itself.

for the widespread implementation of laws for registering sex offenders and notifying the community of their presence. President Clinton signed national legislation encouraging the states in this policy in 1996. We understand the law as coming from widespread knowledge of a particular event. The source of the legislation is a sort of celebrity crime. But the situation illuminates one of the aspects of this analysis that we are trying to develop. The celebrity and the law ought to not simply be seen instrumentally. Megan's Law, whether the national legislation or similar iterations in various states, embodies the celebrity of the murdered child. This contemporary development is similar to that surrounding the Mann Act in the early part of the 20th Century, although, then it was the perception that 'white slavery'<sup>49</sup> was a major social issue and the celebration of the individual was less central. With the passing of the white slavery issue from public consciousness has come the passing of the significance of the Mann Act although the prohibition against crossing state lines for immoral purposes has become a foundation for the national power to regulate affairs in the states.

We have relied on the work of the group of scholars at the University of Queensland who examine the cultural function of celebrity in the book *Fame Games*. Their project is represented on the cover by the seductive look and tarty smile of Australian singer Kylie Minogue. Introduced to a relatively clueless world as one of the icons of Australia during the closing ceremonies of the Sydney Olympics in 2002, Minogue's image migrates to the cover of the book as a marketing ploy and then it appears on the cover of the Cambridge University Press catalogue for 2001. There it functions, as the authors no doubt hoped it would for the book, like that of Julia Roberts or Princess Diana on the cover of *Time*. It draws attention to the product by association with the familiar and attractive. The once stodgy academic press uses the glitz and sexuality of the pop star to push its academic books for this season. It links Minogue to the products of the press, which become the treats inside the catalogue.

In *Fame Games*, Minogue's celebrity is linked to an analysis of the promotion industry and the production of the special place in the culture that is celebrity. In the societies we have been examining both celebrity and law are commodified.<sup>50</sup> Law shares cultural space and cultural form with celebrity and, where it is successful in influencing society, it is part of the 'culture industry.' Some of our colleagues in culture rather than law have argued that tabloids have replaced or become the fairytales of the 21st century.<sup>51</sup> Both are ways of defining and creating our culture's morality. Both are commodified. This is not new and the critique appears often in Western

<sup>49</sup> The kidnapping of women, the emphasis was on white women, and indenturing them into prostitution.

<sup>50</sup> Turner *et al* write of '... cultural industries whose interests are served by the celebrities promotion:' 2000 above n 9 at 11. We think that law is this sort of cultural industry.

<sup>51</sup> Friedman 1999 Above n 8 at 29

culture. JD Salinger has Zooey talking about how knowledge, materialised as ego, can become just as much a possession as are cars, or money or houses. One aspect of celebrity as a source of law is in promotion.<sup>52</sup> We expect celebrity to be marketed and are only learning of the need to market law.

In articulating the ways celebrities act as sources of law it is important to describe how they act as participants in a policy making process. The AIDS work done by Princess Diana undoubtedly had an affect on public consciousness in regard to the disease by changing perceptions about its risks and how people who are sick should be treated. It also gave support to legislation, such as the Americans with Disabilities Act, which sought to protect those who had been infected.

Turner and his colleagues connect the production of celebrity with the construction of community.<sup>53</sup> It is an aspect of the fluid process that law as culture has to incorporate to fully comprehend governmentality.

## V

### CONCLUSION

When we say here that celebrity is a source of law we mean a number of things. Celebrities contribute alongside expected or traditional sources. At various levels and in various ways a reciprocal relationship may simply be a modern reality in which celebrity is as secular and non governmental as it was religious and governmental years ago. As once the law depended on the King and his court it now depends on the celebrated in society in their many faceted forms.

<sup>52</sup> JD Salinger, *Fanny and Zooey* 'As a matter of simple logic, there's no difference at all, that I can see, between the man who's greedy for material treasure—or even intellectual treasure—and the man who's greedy for spiritual treasure.' Pp 147–48.

<sup>53</sup> Turner *et al* 2000 above n 9 at 15.