Ethics, Aesthetics, and Law: The Third Man’s Three Prongs

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ABSTRACT

The chapter explores the role of law in society and its relation to ethical conflicts as reflected through the prism of the film The Third Man. By focusing on the complexities of life in post-war Vienna, the film exposes dilemmas that prevail in ordinary times and in functioning democracies as well. Our analysis suggests that one way to manage these dilemmas and balance the conflicting loyalties and interests they raise is to sustain open channels between the law and other narrative-generating practices from which normative stances are evaluated. The law-and-cinema discourse is one such channel and The Third Man presents, in our eyes, the vitality of that channel, due to its rich aesthetical language and its unique representation of the ethical tensions (and their consequences) in the modern era.

War and its aftermath crush all individuals, however clever they may be.  
– Sinclair (1988, p. 1)

1. INTRODUCTION

This decade marks the 60th anniversary to the victory over Nazi Germany. The defeat of Nazi Germany was unique not only because it ended the
massive military campaigns in Greater Europe and North Africa. Crushing the Third Reich in battle also marked the beginning of one of the more impressive “rehabilitation” processes carried out in the 20th century. Experience taught the Allies that victory in war was a necessary but not a sufficient condition for peace. Of the many dilemmas that this – and presumably any other – post-war rehabilitation process entails, one is worth highlighting in particular. Whether defined as occupation or liberation, war and its conclusion pose, by definition, a deep challenge to the formal legal system operable in the territory under belligerent occupation.1 Rather than focusing on the traditional questions that arise when a legal layer is put in place in post-war situations (such as issues of conflict with existing laws, or the legitimacy of externally imposed norms) this chapter will focus on the post-war moment – or more accurately, the post-war phase – as a window through which interesting insights can be gleaned regarding law in everyday situations. The cracks suffered by the edifice of the rule of law at the aftermath of war and during belligerent occupation expose some key ethical features that often remain hidden or blurred in ordinary times. These ethical tensions, and the role of the rule of law in their management, will be at the focus of this chapter.

Methodologically, this chapter will steer away from the beaten path of analyzing legislation, case law, and legal proceedings (i.e., traditional legal methodology). Instead, the organizing source at the center of this chapter is a film. We chose to explore the relations between the law and other normative sources through the prism of The Third Man (1949), one of the prime products of British post-war cinema.2 The film – precisely because it is not a legal source and precisely because it does not directly address legal themes – is a useful platform for examining the unarticulated assumptions underlying the law and for highlighting some of the tools the law uses in its “ordinary” operation.3 Using a non-legal cultural artifact offers a fresh perspective on matters the legal world is either blind to or unable to directly acknowledge given the foundation of the practice. It also offers an indication of possible attitudes towards the role law plays in society.4

Our choice of this specific film was influenced, naturally, by the fact that the movie was made right after the war, and thus reflects an authentic appreciation of the post-war phase. Furthermore, the movie is structured around ethical dilemmas – the very same dilemmas that an operating legal system regulates either directly (through legal norms) or indirectly (through enabling mechanisms for private ordering or for the establishment and maintenance of background conditions that assist in mitigating or “managing” these dilemmas). Lastly, we chose the film for its aesthetics.
The famous black and white and light and shadow games played by the camera – the noir characteristics of the film – are an integral aspect of the ethical claims addressed therein.\footnote{5}

In the following sections we will briefly sketch the plot of the movie, elaborate on the ethical conflicts portrayed therein, and then comment on their relevance to transitional and “permanent” legal orders. We will then comment briefly on the aesthetical presentation and construction of these dilemmas and their relevance to our understanding of the operation of the law in post-war times and, by reference, in peacetimes.

2. THE PLOT

Although The Third Man is aesthetically and cinematically sophisticated – it is among the clearest exemplars of film noir – its plot is rather straightforward. A small-time racketeer, engaged in one trick too many, causes the death and suffering of the sick by selling diluted penicillin on the black market, gets caught, and ultimately finds his own death while trying to escape. Here is how it transpires.

The year is 1949. Holly Martins, an American writer of Westerns,\footnote{6} arrives to post-war, divided Vienna on an invitation from an old childhood friend, Harry Lime. Lime has invited Martins to write propaganda for a volunteer medical unit Lime allegedly runs. Upon his arrival, Martins is horrified to find out that Lime was killed a few days prior in a car accident. Martins decides to stay in Vienna after he begins to suspect there is more to the accident than it appears when he meets several people who knew Harry.

First, Martins encounters the British Colonel, Calloway, who refers to Harry as “the worst racketeer who ever made a dirty living in the city” (Greene, 1988, p. 26). Calloway was investigating Harry right before Harry’s demise. Then Martins meets Baron Kurtz, who claims to be Harry’s good friend, and tells Martins about the circumstances of the accident. Next, Martins meets Anna Schmidt, Harry’s girlfriend and an actress in Viennese operettas. Anna is Czechoslovakian and, therefore, officially a Russian citizen. In order to stay beyond the Russian zone, she uses forged Austrian papers that Harry arranged for her. Soon enough, Martins falls in love with the melancholic, beautiful Anna, a feeling which she does not return.

As more facts are revealed, Martins becomes increasingly doubtful about the circumstances of Harry’s death and starts suspecting foul play. His suspicions intensify when a witness to the accident, a porter in a hotel who was willing to confide in him, is killed shortly before their planned meeting.
At this point, about 65 min into the film, the dubious Martins encounters his supposedly dead friend, Harry, who, as it turns out, is very much alive. However, Harry manages to disappear before Martins is able to speak with him. Harry’s “death,” as Martins is now painfully aware, is part of Harry’s illegal activities. It seems that Calloway’s allegations were correct and Harry is a ruthless black-marketer who traffics in stolen, diluted penicillin that caused death and deformation to many sick children.

Calloway tries to influence Martins to help the police in their quest to get their hands on Harry Lime. Martins eventually decides to help Calloway in return for Calloway’s assistance with Anna’s papers. The trap for Harry is set, but upon learning the details, Anna refuses to accept Martins’ help. When Harry shows up, a rather dramatic chase in Vienna’s long sewer channels ends with Martins fatally shooting his friend.

In the final scene after Harry’s funeral, Martins watches Anna as she passes his car without stopping, not even to acknowledge him. Instead, she continues down a long dirt road towards an unknown destination.

3. ETHICAL CONFLICTS: BEYOND THE GRAY ZONES

The city is divided into four zones – each occupied by a power . . . but the centre of the city – that’s international. (Greene, 1988, p. 12)

The Third Man, as a fine example of the film noir genre, is not merely a thriller; its drama characteristically contains a clash of ethically relevant virtues, values, and codes of conduct. It is not just about a chase after the enigmatic Mr. Harry Lime, but also, if not primarily, about the ethics of the different players and the moral choices they represent. Yet, in line with other movies of film noir genre, the film does not attempt to demonstrate the “correct” solution to these clashes, but rather applies its cinematic palette to illustrate evocatively the emotional significance, or the “price tag,” of doing the “right thing” (or at least of taking the theoretically defensible ethical choice). By inviting the audience to care about the leading characters and their ethical conflicts, the film provides us with an opportunity to appreciate the weight of the actions taken.

The film organizes the ethical dilemmas by portraying the different loyalties to which the characters are committed. Loyalty, by its nature, places a certain demand on the subject, limiting him or her from pursuing courses of actions that he or she might otherwise prefer to pursue. A citizen loyal to her country is required to refrain from acting in a way that will
harm the country. This loyalty may conflict with others loyalties, such as the loyalty to a loved one. As Sartre (1965, pp. 35–36) pointed out in his famous example, the loyal citizen may face a conflict between his loyalty to his ailing mother and his loyalty to his country, preventing him from enlisting with a resistance movement to defend his country so that he may care for his mother.9

The four leading characters in The Third Man – Anna Schmidt, Harry Lime, Col. Calloway, and Holly Martins – face conflicting loyalties, and are continuously forced to take a stand and make a choice that is directly related to their loyalties. They are required to judge – not in a legalistic sense, but nonetheless to judge – between their different sets of commitments. In order to appreciate the film’s noir stance regarding ethical choices – namely before we, the audience, rush to judge the characters, we should be sensitive to the “price” associated with a certain choice – it is worthwhile to examine the conflicts of loyalties faced by the leading characters in closer detail.

3.1. Anna Schmidt

Anna Schmidt, a Russian citizen with forged documents, is an illegal resident of Vienna, hunted by the Russian authorities. She fears deportation to the Soviet zone, where life would be harsher for her, especially given her use of the forged documents. Martins offers her a way out: tickets and legitimate papers out of Vienna. She is thus placed in a tragic situation where she must chose between her loyalty to Harry, whom she loved, and her loyalty to herself. Anna suspects that Martins’ aid was made possible at the price of Martins’ acquiescence to assist in the capture of Harry. When her suspicion is confirmed, she rejects the offer: “If you want to sell yourself, I’m not willing to be the price,” she tells Martins while tearing the ticket and the papers into pieces (Greene, 1988, p. 108). Anna makes clear that while she no longer wants Harry, he is still in her heart, and that is enough for her to refuse to take any part in his capture. She insists the decision should be hers, not Martins’ (even though there is no real decision to be made in her mind; she just will not do it).10

Yet the conflict Anna is facing is not only between her loyalty to herself (in the sense of self-interest) and her loyalty to her loved one; it is also a choice between her loyalty to her love and her loyalty to the well-being of her fellow citizens (as represented in the movie, interestingly, by the loyalty to the rule of law). Anna cares about Harry and feels little or no commitment for the rule of law and its institutions, so her choice is easily
made. She will not do anything to harm Harry, regardless of the consequences to herself, to Martins or to the well-being of the people of Vienna. In fact, she is willing to actively lie for Harry and break the law – or at least defy the legal authority of Col. Calloway – by warning Harry. Between justice and love, between the claims put forward by Col. Calloway for the sake of the sick children and on behalf of the law, she chooses love, even if that love remains an unrealized and unreciprocated ideal. She feels no particular obligation to be honest or truthful nor does she feel a great need to know the truth about what Harry has done or whether Harry is alive. Her inner truth, it seems, is not to betray Harry’s trust regardless of whether he has betrayed hers.

3.2. Harry Lime

Harry Lime is a villain with a twist. His iniquitous activities are supplemented by a custom-made ideology that serves as a justification for his choices. While Harry’s long friendship with Martins demands Harry’s loyalty towards Martins, and his relationship with Anna, whom he knows is in love with him, demands, at least, his continuous care, his behavior demonstrates that he views both friendship and love as merely instrumental. In other words, they do not present any independent valid claim upon his loyalties. His only loyalty is to himself, or to be more precise, to maximizing what economists would call his “utilities.” He views Anna’s and Martins’ expectations and feelings as impairments from which, fortunately, he does not suffer.

Harry feels neither obligation nor urge to aid Anna in her time of need. Anna is no longer of any use to him – after all, he is “dead” and needs to remain dead, even to Anna – so “his hands are tied” when confronted with Martins’ persisting requests to aid her. In shirking any responsibility, he explains to Martins, “What can I do? Be reasonable. Give myself up? This is a far, far better thing” (*id.*, pp. 96–97). Harry’s version of reasonableness matches his approach to loyalties. For him, to act reasonably is to act in pure self-interest. If disappearance was good for him, there is no reason why disappearance would not be good enough for Anna, even if her disappearance is not voluntary and is to the Soviet zone (from which she might not return).

Similarly, he views the demands made by the community or the state to abide by the law as a social construct that one should deconstruct. Having been deconstructed, the state becomes a mere mechanism for the maximization of power with little regard either to ethics of care or to ethics
of justice. Harry’s moral, or amoral, attitude is best expressed in his famous “Great Wheel speech.” After pointing at the “people moving like black flies at the base of the wheel” (id., p. 97), Harry unfolds before Martins his worldview in a nutshell: “Would you really feel any pity if one of those dots stopped moving forever? If I say you can have twenty thousand pounds for every dot that stops, would you really, old man, tell me to keep my money – or would you calculate how many dots you could afford to spare? Free of income tax, old man. Free of income tax. It is the only way to save nowadays” (id.). As the wheel descends and the flies transform into recognizable human beings, Harry elaborates: “… in these days, old man, nobody thinks in terms of human beings. Governments don’t, so why should we?” (id., p. 98).

Without much fanfare, Harry states that he is willing to express loyalty to law and government to the same extent, no more, no less, as governments express towards him. As governments think in masses (in five-year bureaucratic plans that are detached from the humanness of the individual), so does he; as governments calculate their gains and losses (including losses in the lives of their citizens) in order to maximize their utility, so does he. And so should Martins. To Harry, any other attitude towards friendship, love, or the rule of law is misguided by a romanticized perception of reality. “We aren’t heroes, Rollo, you and I. The world doesn’t make heroes outside your books” (id., p. 97). Not only are “moralistic” ideologies misguided, they also do not work. The most efficient way to promote prosperity, knowledge and gains in every field is through harboring pragmatic self-interest, even if that leads to a state of constant struggle, where every man is for himself, and man to man – wolf.11

3.3. Colonel Calloway

If Harry is a villain, Col. Calloway represents the quest for public interest and the promotion of the good of the collective. In post-war Vienna, which is under military governance, he represents the law. He is a soldier, in charge of the British military police in Vienna. “With a background of Scotland-yard training, he is steady, patient, and detriment in his work – a man who is always kindly up to the point when it interferes with the job, who never gets angry (because it would be unprofessional)” (id., p. 8). Burdened with the responsibility of combating the aftermath of the war, namely the breakdown of social order and the rule of law, his mission is to bring Lime to justice, upon which he embarks with British matter-of-factness.
The choices he has to make are not those that involve abusing his authority for personal gains (such as money, love, or friendship) – that would be acting out of character – but rather choices that involve the conflict between adherence to the principles of fair and due process and reaching the desired (and, if evaluated irrespective of process – just) result. However, he is willing, when the balance appears right, to bend the formal rules to achieve the “right” outcome. Calloway needs Martins’ cooperation in capturing Lime since Martins can lure Lime in. “What price would you pay?” asks Martins. “Name it,” answers Calloway (id., p. 101). In the immediate scene that follows, as if with a magic wand, Anna’s up-till-then unsolvable immigration problems are swiftly cleared. “Well, Miss, you’ll be having breakfast in the British Zone,” Anna is told. “You needn’t fear the Russkies with those papers” (id.).

Calloway’s loyalty, then, lies with the ends of good government. He clearly sees right from wrong and identifies himself as fighting for the good guys, who, while sometimes forced to look the other way and cut some corners, nonetheless play a crucial role in restoring the rule of law. His plea to Martins is to join him, and thus join the community of people and of values of which Calloway is a guardian.

Martins, as his character is portrayed throughout the film, views himself at least to an extent as playing the role of the lone good guy in one of his Western novelettes. This role involves exposing the truth and thus frustrating the scheme of the “utilitarian” Sheriff – in this case, Calloway – to pin the blame on the wrong guy just in order to calm things down. Martins initially suspects Calloway of the basic sin of police power: victimizing the innocent in order to pursue a public interest (and in this case, in order to restore a sense of order or a resemblance of normalcy). Yet the honest guy that Martins is, he cannot remain indifferent to the evidence put forward by Col. Calloway and to the latter’s demand that Martins assist in bringing to justice the people who harmed so many human lives by diluting the penicillin.

Martins – the lone rider – must choose between his loyalty to his best friend, Harry Lime, who offered him a job in Vienna and to whom he was indebted since childhood, his loyalty to his newly found love, Anna, and his ethical commitments to truth and justice. Martins knows that by bringing Lime to justice he will breach the loyalty he feels he owes Lime and
probably lose whatever affection he might win from Anna who is still devoted to Lime. Martins eventually chooses not to side with Harry. He then has to “pay the price” and lose Anna’s respect.

4. LOYALTIES AND LAW

What role does law play within this ethical framework of conflicting loyalties, if at all?

Before we directly address this question, we have to acknowledge the complexity of the term “law.” The law may refer to a specific body of rules (positive law), to a certain set of institutions (as in the colloquial term “the legal system”), or to a certain social domain (or “system” in the Luhmannian sense) which infuses the institutions and practices within which these institutions operate with a certain set of ideal types, consciousness, and modes of communication (language). Under the latter definition, “law” is a social space, separated (one way on another) from the various other social domains (which are organized around their own functional kernels and which are constituted via their own linguistic and aesthetic modes of interaction and imagination). While we usually treat the term “the law” as a set of norms (i.e., the first meaning described earlier), sometimes, as the context demands, we invoke the term to denote the set of institutions or the social domain itself.

Having briefly attended to the complexity of “the law,” we should also recognize the various meanings of “loyalty.”20 Some may view loyalty as an emotion, and would argue that law has little to do with emotions: we do not feel something towards someone because the law tells us to, just as we cannot cease from experiencing a certain emotion towards someone simply because the law orders us not to feel that particular emotion towards a particular individual. Therefore, if loyalty is indeed an emotion, akin to devotion, compassion, and the like, it is beyond the effective reach of legal regulation. However, even if it is true that law does not or cannot regulate emotions – and this seems to us as a bit simplistic, since the relationship between law and the emotions is rich and complex21 – loyalty is distinct because it is not “just” an emotion (if there is such a thing). Loyalty is also a cognitive position informed by moral reasoning and thus subject to moral evaluation and critique.22 Morality has something to say about what deserves our loyalty, and also about what should we do when faced with competing ethical claims, one or more of which are claims of loyalty. More importantly, the actions pursuant to such (morally relevant) loyalties are
very much the subject matter of legal norms. Thus the relationship that connects law and loyalty is important to consider.

The first question that arises in this context is our perception of the claim that law has upon us. Two options come to mind. Under the first option, loyalty should be to the law above all else because it is the overall balancer of competing loyalties. Under this option, the law aspires to resolve the conflicting loyalties by balancing their respective strengths under the circumstances so that certain courses of action are either permitted or required by law while others fall outside the boundaries of what the law permits (and therefore would expose those who chose to pursue them to civil or criminal liability). Under the second option, the law is of a more limited scope, concerning itself only with protecting certain rights (or interests), thereby not resolving the conflict of loyalties at all. Under this option, the law presents before its subjects an independent claim of loyalty, which may, in certain circumstances, compete with other loyalties.

Let us clarify this tension with some examples. In *The Third Man*, Anna refuses to aid the authorities. “I wouldn’t do a thing to harm [Harry]” (*id.*, p. 108), she says even after learning that not only has Harry harmed others but has also refused to help her. Assume that pursuant to a motion by Col. Calloway, a judge would have ordered her to provide the information concerning Harry’s whereabouts. Would we see that as a case where the judge has balanced all the relevant moral considerations at hand – including Anna’s loyalty to her beloved – and therefore the judge’s order leaves no room (or need) for further consideration? Or should we view the judge’s order as demanding that Anna choose between her loyalty to the rule of law and her loyalty to Harry? A similar type of dilemma may arise in other circumstances: Assume that the Supreme Court of the United States has ordered reporters to disclose their sources if so required by a grand jury. Should the reporters follow the rule of law – since, after all, the court of law has balanced the competing claims of loyalty? Or should the reporters’ loyalty to democratic principles and to their sources (assuming they gave their word to the sources to maintain confidentiality) compel the reporters to “balance” their loyalty to the law (the court order) with their other loyalties?

Our understanding of the claim the law places on us would affect our assessment of the choice the individual in question makes. If we view the law as the ultimate “balancer,” exhausting the sphere of normative debate (by according each claim for loyalty its due weight), then we would tend to have little moral patience with the reporters’ insistence to disregard the comprehensive and nuanced balance embedded in the legal judgment. On the other hand, if we perceive the legal judgment as concerned with only
specific rights and interests – and not with the entire normative field – we would view the legal judgment as merely putting forward another, independent claim, albeit armed with the coercive power of the state. In this case, the reporters’ decision might gain some moral support.

Whether we view the law as aspiring to resolve such ethical dilemmas or not, it seems that the law, as argued earlier, demands our loyalty to some degree. This loyalty is not only for a certain action or performance, but for the consciousness that accompanies that action – the *opinio juris* – namely that the action is not merely an arbitrary command of a despot, but also an element of a sovereign, reciprocal relationship between citizen and state. Just like other relationships place certain demands of loyalty, so does the state–citizen relationship; the law demands our loyalty because it is the formal medium that relates (or binds) the citizens to the state (and the state to the citizens). Put differently, for the law to be law, not just an act of power, it must provide an internal viewpoint from which we explain and justify to ourselves why we should obey the law and why the law should conform to certain norms and procedures (Hart, 1961, pp. 55–57; Tamanaha, 1996). This internal viewpoint, then, requires us to tell ourselves the “story” or “narrative” at the basis of law: why it is that the law exists and demands our loyalty. There are two alternative narratives that may operate in that context.

First is the narrative contained within the canonic dystopian framework where, without a legal order, the “fist law” will rule whereby might makes right. This Hobbesian attitude emphasizes that law is primarily about order and the regulation of power, safeguarding against the chaos of a world based on “fist law” (Hobbes, 1991 [1651]). By establishing the monopoly over coercive power the law denounces the notion of “fist law” and expropriates to itself the position of having the ultimate fist, so to speak (Cover, 1983). This primeval fear from chaos is conspicuous in 1945 Vienna, a city that disintegrated from the “glamour and easy charm” of pre-war Strauss music into “the classic period of the Black Market” where everything was for sale and “amateurs” ended up dead, “floating in an icy river.” Fear appears as much an ingredient of Vienna’s new culture as decadence was of the old. This fear legitimizes the quest to reestablish the rule of law. On one account it also promotes the ability to establish the cooperation necessary for a sustainable regime. Yet this might not be so; if it is the authorities that are feared, such fear may inhibit cooperation. It should be noted that according to this narrative, the values at the basis of the legal order are secondary to the notion of order. The law need not present itself as the ultimate balancer as long as order is maintained by legal
norms. Our loyalty to law in this narrative, then, is merely instrumental; it is contingent upon our assessment regarding whether the law can actually bring about the kind of order we seek. Furthermore, as the Vienna example makes clear, our loyalty to law (and order) may be trumped by our loyalty to more important things than order, or more meaningful relationships than the state–citizens bond.

Second is the more popular narrative which puts at the center a more optimistic notion of cooperation; rather than fear from chaos, the rule of law may be seen as representing a social contract that embodies the values of the community. Such a narrative assumes an intricate process of establishing and reestablishing a deep accord as to the core moral values that reflect the shared beliefs of the community. At the same time such social contract also serves to bind the community into a polity; by enshrining the common values, the covenant constructs a shared ethos (Post, 1993, pp. 168–169).

This appealing, if somewhat romantic, narrative receives a rather cold shoulder in *The Third Man*. Fragmented Vienna highlights the difficulties inherent in adopting such narrative as a basis for our loyalty to law. In Vienna of 1945 it is apparent that people’s values differ greatly. Furthermore, the aftermath of the war exposes the rough stitches that keep the “community” together. Who is the relevant Viennese community? The native residents? The immigrants? The war refugees? The occupying powers? Whose interest should such social contract represent? If Austrians are not allowed into the famous Viennese hotel – The Sacher’s Hotel (Greene, 1988, p. 32) – and if demonstrations are not allowed (*id.*, p. 66), it is no wonder that solidarity with the “visitors” is not taken for granted. In that context, Col. Calloway’s proposal to adopt a certain notion of the public good – as a basis for reestablishing the social contract – is received with a considerable degree of suspicion. The people of Vienna want little to do with the authorities, skeptical as to the good such loyalty will bring. The only Viennese who agrees to help the authorities – the old porter – was fatally failed by the system: He was murdered. It seems, then, that *The Third Man* portrayed a community of individuals kept together by their location and by remnants of a past culture, a community that is bound together – if at all – by the almost instinctive rejection of the notion of a collective. Loyalty to law as representing a collective social contract, then, is almost ridiculed by the people of Vienna as nothing but a manipulative slogan.

The loyalty that the members of the community supposedly feel for their fellow individual members raises the question of the attitude towards the “other,” namely the “non-member.” Is there also a loyalty claim towards
the “other”? And in law, what legal protections are non-members entitled to? Where do Anna’s interests fit in as a Czechoslovakian – and thus officially a Russian citizen – with forged Austrian papers? Harry’s critique regarding the lack of “true” solidarity is biting. His claim is that the social contract narrative and the care that should be at its core are merely a façade. Such a narrative’s main use is to obscure the reality by distorting the fact that the law is being used by those in power for their own ends, ends for which the individual members of the community are merely numbers and dots.37

This distrust towards the prevalent legal narrative – that the law represents a social contract that forms a collective and that the law is inclusive – is reflected also at a deeper level: Is our loyalty to law expected because it reflects “our” norms – and therefore we “owe” it, in the Socratic sense, a duty to uphold it as it “upholds” us? (Santas, 1979, pp. 11–29). Or does the law represent the values of the international community and humanity at large, values that may be “more just” than the organic values that have contingently developed in a specific community but cannot be justified on the world stage? For example, World War II was a war between right and wrong, just and evil. The narrative underlying the drive of the Allied Forces – of which Austria of course was not a part – was that the Nazi values should be rejected, not necessarily because they were not an authentic representation of German (and Austrian) community values, but because these community values violate “the norms of humanity itself” and thus they deserve no loyalty.

What would be the foundation of the “norms of humanity itself”? One way is to turn to an external order altogether: natural law, divine law, or any other such metaphysical source.38 As we know, the claim that “nature so required” was used by both sides of the struggle between Nazism and Liberalism. The film itself raises questions whether nature, including the nature of human beings, is a sound enough moral basis upon which to ground the commitment to the rule of law. As for religion, the film portrays men of cloth as absents and to the extent they are referred to, it is with irony; they present no greater claim for pursuing justice than the claim presented by anyone else, if they present one at all.39

Another way to ground the core of “the norms of humanity itself” is to expand the notion of community to encompass the human race, by suggesting that the social contract is a contract “signed” or entered into by all humans. Yet under such conception, an individual in Vienna feels she has very little influence. Her ability to participate in shaping the “norms of humanity itself” is limited and it is unclear whether these laws really care for
her and her authentic expression of autonomy. Under these circumstances, the Socratic demand of reciprocal loyalty is weakened. If indeed “the norms of humanity itself” are a manifestation of the social contract narrative (or a variation thereof), the role the international community plays as the caretaker of this contract is significant. Yet the international community and its ethical stance, if it has one, are portrayed in The Third Man as rather crude. “The centre of the city – that’s international,” explains the narrator at the opening scene (Greene, 1988, p. 12), establishing the centrality of the commitment to humanity at large. But the film is quick to dispel any notion that the laws governing the behavior of the international community are necessarily more just towards the individual, as is clear from Anna’s case and from the general restrictions placed on the movement of residents in their own city. It is therefore quite unclear whether the movie embraces the notion that one should relocate his or her loyalties from the domestic legal system to international law.40 Similarly, to the extent that the Allies have fought a war against the Nazis in the name of “universal” law (premised on a moral rejection of Nazism), the movie demonstrates the discrepancy between such noble ideals and the realities of the occupying powers (in specifically, their military police forces).

In short, whether the norms of humanity itself are based on natural law or are the manifestation of the global social contract, the film seems to suggest that embedding our loyalties in the international sphere is problematic because this sphere merely imports the ailments of the national (or communal) order.

But the movie presents an even deeper challenge to our loyalty to international law. In the real world, according to its cinematic representation in The Third Man, fates of individuals, such as Anna, are not governed by the commitment to the “norms of humanity” itself at all, but by a highly pragmatic (if not cynical) notion of the “social contract” approach: Calloway “contracts” with the Russians, by way of bargaining, and thus the fate of Anna is determined. This somewhat Machiavellian view of governance is difficult to reconcile with the romantic notion of the social contract theory, and thus the question of the source and scope of our loyalty to the international order remains open. While this depiction of international law is tied to international politics in the first half of the 20th century, some might say that modern day globalization cannot be fully understood without noting this heritage.

An alternative way to address the above-mentioned tension between the two narratives and between the national and international spheres would be to shift our focus: To what is the law loyal? Is the law loyal to principle or is
the law loyal to power and its social manifestation? Whereas Dworkin (1988) would claim that Law’s Empire is based on a system of coherent principles, Machiavelli (1988) would certainly view law as a system of manipulation set to achieve a result that serves the governing elite, cloaked by legal jargon so as to adorn it with legitimacy, and a demand for compliance. The tension between the opposing narratives is clearly demonstrated by the current contradicting perceptions regarding globalization. According to one line of rhetoric, globalization manifests the aspirations of the entire humanity to work in tandem for the principled benefit of all. In this perception, law plays a crucial, unifying role by establishing the mutual framework that binds humanity together and enables the amalgamation of nations around shared principles (economic or otherwise ideological). According to the alternative line of rhetoric, globalization is a tool of the powerful to increase their domination over the less powerful. Under this perception, the law is an instrument that conceals the use of crude power and thus it is not clear whether it deserves our sincere loyalty at all. Harry Lime sought to expose this precise camouflage. The question of whether Harry Lime is right or wrong is left unresolved in The Third Man.

It seems that The Third Man challenges our unarticulated attitudes towards the law most pointedly when there is an altogether absence of an operating legal system. Where does our loyalty to law lie when there is no functioning legal system? To what is an absent law loyal? In post-war Vienna the legal absence is reflected in the disconnection between the governmental institutions (including the legal ones) and the community they should be serving. Furthermore, it is not clear that a distinct “Viennese” community exists. It may very well be the case that such a fractured and disillusioned community is incompatible with the idea of law. The untethering of the social fabric inflicted by the war results in a social situation antithetical to the notion of law. This is so not only because some degree of order has to exist for law to function, but because some degree of cohesion – a sense of shared responsibility – has to exist for there to be a sense of sovereignty. Vienna, a paradigmatic locus of culture, civility, and governance, is transformed to a mere shell; in these circumstances it is no surprise that the legal system is but a shell too.

As mentioned, the movie addresses a rather extreme situation in which the underlying social, cultural, and moral foundations upon which legal institutions rest become partially undone as a consequence of the devastation wrought by the war. The movie allows us to inquire whether in relatively cohesive society with operating legal systems and with relatively clear notions
of sovereignty a certain degree of “legal absence” — i.e., areas of social life where the law is less present — also exist. The idea of “legal dearth” is not new. One way to understand law is as a collective practice for mediating and managing collective decisions over which the collective assumes jurisdiction. The collective may thus “zone” certain types of decision to (nearly) private domains where, for example, loyalties to love and friendship are “left” to the individual. The “geographical” understanding of social life, according to which some “areas” are regulated effectively by law while other are not (or may not) raises the possibility of a quilt: In some areas we can talk about the rule of law as present — and thus inquire about our loyalties to it — and in other areas the law may be only somewhat present — in which case we ought to inquire where our loyalties lie.

A similar point arises with respect to the enforcement of the law. When legal norms are systemically underenforced it is difficult to ignore the lurking legal absence even though the law is present in the books and even if there is a slight chance of actual enforcement. When individuals encounter substantial difficulties asserting their rights — either because access to state agencies (executive or judicial) is hindered or because the authorities are highly selective in their enforcement — it appears that the law is neither totally present nor totally absent; in such cases the legal phenomenon could be understood as a continuum. In these circumstances — which need not occur only in times of war — questions regarding the loyalty to law may arise, especially given law’s inherent difficulty with the notion of shadows, or degrees of presence.

The law in The Third Man appears absent. Officers of the Austrian law are nowhere to be seen, nor are legal procedures depicted on screen or contemplated by the characters. The war, apparently, has destroyed the legal system not just the buildings of Vienna. Yet the idea of law is not absent: that lack of legalism highlights that which is missing: a well-functioning, just, system, organized around sound principles which make moral sense. The zones in Vienna — a legal construct designed to separate powers — are artificial; they are not an authentic source of authority. Yet their unauthentic presence emphasizes the absence of the authentic; the zones are thus a shadow of a sound structure, where powers and legal authority are divided accorded to principles other than mere power. By raising the possibility of a continuum between total absence and total presence, The Third Man prompts us to wonder to what extent our own, contemporary legal system — on the local, national, and international dimension — is present and what type of loyalty claim this state of affair places upon us.
5. AESTHETICS

Having addressed the ethical pulls The Third Man raises and their relevance to our thinking about the law, it seems timely to turn to the medium through which the dilemmas are presented – a feature film. At this stage, the general discours on law and cinema is sufficiently developed. The general contours of the propositions this discourse can support (as well as its methodological limits) have been already noted by scholars. Since law is a culturally embedded practice, and since culture is represented and constructed also by aesthetical means, it follows that aesthetics plays a role in the operation and representation of the law. Stripping the law from its aesthetical devices – such as the architecture of the courtroom, the attire of judges, the language (and rhetoric) of the different players, etc. – would result in a practice quite different from the one familiar to us. The medium, after all, affects the message, and the medium is affected by its aesthetics. Rather than re-elaborating on these general themes, we wish to focus on two points that call for attention in the context of the ethical conflicts dealt with above. The first is the relation between the ethical world and the genre of the movie – film noir. The second is perhaps more than “merely” aesthetical: the locations chosen for the salient end scenes in which the actual clash of the conflicting loyalties takes place and their relevance to our understanding of yet another dimension of the intricate social geography.

5.1. Film Noir, Ethics, and Law

Film noir, of which The Third Man is a renowned exemplar, is characterized not so much for presenting a stark distinction between noir and blanc but by its presentation of the infinite shades of gray. While there is “light” and “dark” there is a much richer spectrum of variegated combinations in between. Technicolor allows us to present matters – such as reality and ethical choices – in greater contrast since each color has its contours; black and white allows us to appreciate the gradations that actually connect the noir and the blanc. Furthermore, the movie’s use of light and shadow and their interplay demonstrates that what may appear white may turn out black (or vice versa) and both may turn out to be gray; the noir et blanc are dynamic. This dynamic use of the camera and lighting plays an important role in establishing our attachment to the different characters and sets up their ethical dilemmas as authentic. It also reflects – if not constructs – the
ethical world as a domain that contains right and wrong but also extensive
domains of semi-shadows.

The use of the black and white style in the *film noir* genre, and especially
in *The Third Man*, takes this theme a step further by the interplay between
the seen and the unseen. Often, a significant portion of the scene is left
hidden – behind the scenes or simply in the dark. We are aware that at any
given moment what we see is only part of the picture and that what meets
the eye is not necessarily a credible reflection of reality.\(^{54}\) The gloomy aura
of the genre,\(^{55}\) therefore, is achieved not only because its themes evolve
around disenchantment and disillusion, but because the human condition is
represented as something we can see only partially and, even then, not in
bright colors, but in dim light (or in light that never lets go of its shadow).\(^{56}\)

Aesthetics and message, therefore, converge.

The perception that what you see is not necessarily all that is there, that
parts of the picture remain behind the scenes even though these parts may
play a leading role in charting the course of events, and that happy endings –
justice (and camaraderie) for all – are not necessarily guaranteed by the
system, are among the main characteristics of the *film noir*.\(^{57}\) In this respect,
the *film noir* genre is considered “realistic.”\(^{58}\)

The “realist” perception is not confined, of course, to the cinema; the
realization that important interactions take place “behind the scenes” and
are not fully disclosed is apparent in the realist approach to the law. Trends
within legal realism – which gained prominence around the second third of
the 20th century, and presumably drew from cultural sources similar to
those that nurtured the *film noir* – highlight the importance of factors that
are not explicitly mentioned in judicial decisions.\(^{59}\)

Legal realism would prompt us to recognize the limits of the “official”
legal aesthetics, and specifically, judicial rhetoric. More accurately, legal
realism urges us to recognize the official, namely the “presented” legal
aesthetics as a *mise-en-scene*: only a part of a greater design. According to
legal realist approach, judges are influenced by a myriad of factors
(including their unarticulated and individually-held set of values, economic
and social pressures, and sometime even their mood). Therefore, some
argue, just as it would be impossible for the cinematic world to collapse the
“behind the scenes” into the “scenes,” so it would be impossible for judges
to expose all the factors that influence their decisions.\(^{60}\) The law, under that
conceptualization, is not only the illuminated rules, it is comprised also of
*law noir*:\(^ {61}\) the shadows and ambiguities the norms (and the legal order as a
whole) cast.\(^ {62}\)
A legal realist, it would seem, would be equally suspicious of law’s aesthetical tools designed to establish authority, such as the elevated dais, the gravel, and the judicial robe. These aesthetical tools aim to demarcate clear boundaries between the person and the judge (or between law and other normative domains) and empower the latter to draw bright lines between the noir and blanc, the legal and the illegal (or the extra-legal). Yet, as mentioned earlier, the judge is but a person, and thus the realist approach encourages us to recognize the person behind the robe (and the interplay between the legal domain and other domains). At the same time, legal realism – just like the film noir – does not aspire to deconstruct aesthetic tools altogether; such an endeavor would result in the disintegration of the legal process (and of the cinema); it would undermine the distinctiveness of law and risk its collapse. On a more abstract level it could be argued that this ambivalence is another aspect of the noir et blanc interplay, apparent in film noir and in legal realism.

It is further interesting to note that both film noir and legal realism do not absolve us from our duty to seek doing the morally right thing.\(^6^3\) Realism – cinematic or legal – recognizes the problematic ethical dimension of power-infused social practices such as the law, war, or even the cinema, and also recognizes our limited ability to act justly. Yet legal realism and the film noir genre do not embrace nihilism, apathy, or selfishness. The clash of loyalties in The Third Man must, at the end of the day, be solved by each of the characters.\(^6^4\) Some options are more morally defensible than others, even if the price of the clash cannot be ignored. Similarly, in legal realism, some legal options are more defensible than others,\(^6^5\) even though the law is not determinate and thus it might not necessarily present a clear-cut, neat, and cost-free solution to clashes of legal rights. Metaphorically speaking, shadows will remain and the gloom that accompanies such struggles cannot be fully extinguished.

5.2. The Location of Ethics and Law

As mentioned earlier, the film does not necessarily resolve the ethical dilemmas arising from the conflict of loyalties; it only portrays the different courses of action taken by the characters and the “price” of these actions. A revealing element of that portrayal is the locations in which the actions are taken\(^6^6\) – that is, the locations in which the different characters ultimately chose (and accept the “price” of their choices). Matters are not
decided in a court of law, couched in legal arguments based on reason, nor are they taken in the corridors of the executive or the halls of the legislature. Rather, the decisions are executed in the gutters and at the graveyard. Harry Lime meets his destiny, meted by Martins’ action, in the underground sewerage tunnels that run beneath the city of Vienna. Martins later faces the consequences of his action after Lime’s funeral – this time, the real funeral – when Anna ignores him as she walks out of the cemetery. Such locations could be seen as the negative – in the cinematic sense – of the “upper” world. While the “upper” world portrays itself as the location where important decisions are made – policy formulated, laws enacted, cases adjudicated – one cannot understand the upper world, the film suggests, without the “underworld”; each can be understood only with reference to the other.

This aesthetical representation of the different localities informs us, the legal realists would say, that the law is not confined to the courtroom. Understanding the law would entail understanding its operation in all localities, some of which are as removed from the courtroom as possible. And at some point we reach law’s geographical limit; the sewerage system beneath Vienna knows not the artificial boundaries placed by the Allies above the grounds, nor does it know other legal or ethical impositions. The urban space thus includes a domain that – although man-made – resembles in a way the Wild West.

Expanding the term “location” to include the characters that ultimately are called upon to take the decisions and the procedures through which these decisions are made, the film suggests that it is not only the figures of authority (and power) that are the relevant moral agents. Matters are not decided by high officials as a product of learned deliberation. They are taken by individuals, often as a result of “traps” and manipulations. Some decisions – including those which aim is justice – are taken altogether outside the domain of law (i.e., the world of legal norms, procedures, authorized agents of states, etc.).

While The Third Man portrays a fictional tale in post-war Vienna, its choice of locations (and their aesthetical representation) may be relevant for our appreciation of law in contemporary western societies. The cracks in the edifice of an operating system that typify the post-war phase allows us to appreciate the locations of decisions taken in the phase but – if indeed the post-war phase in part of a continuum – also allows us to peek into the limits of law in ordinary times, and note the different locations (and procedures) of decision-making in our everyday lives.
6. CONCLUSION

You have to break the rules sometimes; humanity’s duty.  

Carol Reed’s adaptation of Greene’s novel, *The Third Man*, is interesting, we submit, precisely because it resists the temptation to paint the struggle between good and evil as monochromatic. The Allies – who fought and won one of the darkest evils, Nazi Germany – are not the knights in shining armor portrayed in other cinematic representations of that era. This film lacks the types of heroes that never descend from the moral high ground. Harry Lime – technically speaking a citizen of the Allied forces – could be seen as representing pure *laissez-fair* capitalism that demonstrates little or no care for human rights. However, the film’s claim is broader: It presents systems *qua* systems, especially in the modern, technological era as wanting. Col. Collaway is not a bad person; he just has to manipulate those around him for the sake of justice when he operates within the British military system. The partition of Vienna into zones in not done as an infliction of hardship on the residents but as a bureaucratic compromise regarding conflicting claims, yet its effect is that of the former. The prohibition against the presence of Austrians in the Sacher Hotel is understandable, yet it catches innocent citizens as well. The regime that coerces Anna to become a Soviet citizen and to relocate to the Soviet zone in spite her clear preference to the contrary is designed to keep the order and avoid chaos, but it has its price. Reed thus presents an ethically complicated picture. This ethical complexity sharpens the conflicts faced by the characters. It does not provide them with an easy outlet – the world is corrupt and thus permission to be corrupt is granted; rather, one’s loyalties are tested again and again including one’s loyalty to one’s beliefs.

If Reed’s point is sound, this ethically complex view is relevant for our appreciation of the law as well. We should be suspicious of any legal system that either portrays itself as the bastion of pure justice or excuses itself too easily from the quest to achieve justice by stating that the system has it failings and therefore “we do only what we can do.” As the bastion of justice the law would demand our full and complete loyalty, having balanced all competing loyalties, thus leaving no room for external considerations. This view is unattractive, the film suggests, because the law is a bureaucratic system, and as such, lacks the necessary care for each and every individual. Moreover, what the law portrays as the ultimate balance may very well be systemic bias that caters to governmental power...
preferences. On the other hand, approaching law as putting forward a claim for our loyalty on par with competing claims is equally unattractive because it might lead to the kind of chaos and manipulation depicted in post-war Vienna. Moreover, it might release law from its duty to aspire to achieve overall justice. The legal system is thus treading a tightrope between portraying itself as the ultimate balancer of all loyalties and presenting an independent claim for our loyalty. Put differently, the law is both part of the problem and part of the solution; because it is a system, it should be viewed with suspicion, as Harry Lime suggests. Yet precisely because it is a system, it provides a necessary societal infrastructure for ameliorating the types of conflicts faced by the characters in The Third Man (and, by analogy, by individuals in modern society).

The ethically complex picture portrayed by the shades of noir et blanc of The Third Man suggests that we ought not rely solely on the law nor are we at liberty to dispose of it. Instead, we are left with the somewhat unsettling notion that in order to manage our conflicting loyalties an almost impossible balance of faith in the system and a critical evaluation of it is called for. One way to manage this impossible balance is to sustain open channels between the law and other narrative-generating practices from which normative stances are evaluated. The law-and-cinema discourse is one such channel and The Third Man presents, in our eyes, the vitality of that channel, because of, among other reasons, its rich aesthetical language and its representation of the ethical dilemmas (and their consequences) in the modern era.

UNCITED REFERENCES

Herbert (1961); Schlag (2002); Convention Respecting the Laws and Customs of War on Land (1907).

NOTES

1. Article 43 of the 1907 Hague Convention (IV) (Convention Respecting the Laws and Customs of War on Land) deals with this issue by limiting the power of the occupying party through the affirmation of the local legal system of the state under occupation. However, the reality is that during hostilities, and often after the actual hostilities are over, the local legal system is not functioning or not to the same extent as before. See Sassoli (2005).
2. It may be that the film’s lasting power derives also from a rare cooperation of international talents. James Naremore claims that “The Third Man is one of the best and most representative films of a period when ‘European sobriety and American entertainment sometimes worked in tandem.’” See Naremore (1988, p. 80).

3. For an elaboration on law’s unarticulated assumptions, see discussion under “aesthetics” later, and especially pp. 185–188.


5. Yet our claim goes a step further by suggesting that the relationship between ethics and aesthetics is not limited to the artistic arena such as film, but may be examined in other expressive practices including the law. The relationship between ethics, aesthetics, and the rule of law, which currently is underexplored, will receive some attention in this chapter. However, there are few who deal with this issue. See, for example, Rush and Kenyon (2004a), Rush and Kenyon (2004b), and Schlag, (2000).


7. The exact characteristics of film noir are not beyond dispute. Film noir – so named by French theorists (Borde & Chaumeton, 2002) – connotes specific visual images (stark lighting effects which consist of darker images and the use of shadows, unique shooting angles – slightly tilted at times) and an aura of post-war cynicism, disenchantment, and disillusionment without succumbing to overall nihilism. The play of light and shadow reflects the collective sense of uncertainty, fears emanating from the Cold War, and a sense that society and government are infused with corruption without adopting a misanthropic approach. In dealing with a collapse of a pre-war, romanticized way of life that no longer exists, there emerges “the America of film noir: modernized, heartless, coldly efficient, and blase’ about matters such as political corruption and organized crime” (Film Noir, Encyclopedia Britannica, 2008). We suggest that a certain ethical component is part of that parcel.


9. Technically speaking, Sartre brings this case as an example to a moral dilemma, defined as a situation in which the actor is faced by two or more possible ways of action, is unable to ascertain with a reasonable degree of certainty the consequences of the action, yet realizes that each path includes a real risk of causing harm. We do not claim that each character in The Third Man is faced with a moral dilemma that meets these formal conditions, yet Sartre’s general point about the conflict the actor faces illustrates our general point regarding conflicting loyalties. For moral dilemmas in general, see Statman (1995).

10. Her stance is thus radically different from the behavior of another heroine of that epoch – Elze, in Casablanca – who insists Rick would make the decision for them and who cares about the battle between good and evil. See Epstein, Epstein, and Koch (1992).

11. In the film, Harry adds this famous parting speech: “In Italy, for thirty years, under the Borgias, they had warfare, terror, murder, bloodshed – they produced Michelangelo, Leonardo Da-Vinci, and the Renaissance. In Switzerland, they had brotherly love, 500 years of democracy and peace, and what did that produce . . . ?
The Cuckoo Clock” (Greene, 1988, p. 100). However, it should be noted that this idyllic depiction of Swiss politics as a stronghold of democracy for 500 years is somewhat dubious. Since this speech was very much inspired by Orson Wells himself, one can only guess whether Wells sought to portray Harry as less than an expert in Swiss issues or to portray the Swiss in a less than favorable light (Sinclair, 1988, p. 6).


13. Martins associates Col. Calloway’s role with that of a Sheriff:

You some sort of a policeman?
Mmm.
I don’t like policeman . . . I have to call them Sheriffs. (Greene, 1988, p. 26)

14. Martins’ starting point is that Col. Calloway is pinning the blame on innocent Harry:

I guess there was some petty racket going on with gasoline and you couldn’t pin it on anyone, so you picked a dead man. (id.)

15. When finding the cops at Anna’s, Martins asks, “Pinning things on the girls now?” (id., p. 45).

16. Martins describes the plot of his book The Lone Rider of Santa Fe: “A Story about a rider who hunted down a Sheriff who was victimizing his best friend.” In the original script Martins said, “This lone rider has his best friend shot unlawfully by a Sheriff. The story is how this lone rider hunted that Sheriff down” (id., p. 32).

17. One pull that was spared from Martins is the pull towards an entity representing or embodying a “collective,” such as an institution, a nation, or a system (as in “the legal system”). He is a “lone rider.” This does not blunt, of course, the edge of his other conflicting loyalties.

18. “Best friend I ever had” was the description Martins gave to Col. Calloway about his relationship with Harry (Greene, 1988, p. 25).

19. Harry apparently rescued Martins from his loneliness at school: “Never felt so damn lonely in my life – and then Harry showed up” (id., p. 24).

20. The Merriam Webster dictionary defines “loyal” as “faithful in allegiance to one’s lawful sovereign or government; faithful to a private person to whom fidelity is due; faithful to a cause, ideal, custom, institution, or product.” Loyalty, it appears, is an emotion-infused sense of obligation to an entity or an ideal to act (or to remain inert) for the benefit of the subject of one’s loyalty (or at least to avoid harming that entity). The term loyalty is helpful, we think, precisely because it captures the emotional and cognitive elements of such obligation. We are grateful for the anonymous reviewer for the contribution on this point.

21. See, for example, Bandes (1999). We can imagine examples that would lead us to the conclusion that in fact law has a lot to do with shaping, constructing, and the regulation of the external expression of our emotions. In many jurisdictions the law encourages love and care between parents and children, and extracts sanctions regarding the expression of hostile emotions. The law takes into account people’s passion – such as in the concept of crimes of passion, or the defense of heat of passion – whereby recognizing that the breach of “conventional” loyalty (fidelity) in
some circumstances, if of legal consequence. Some suggest that law itself conveys a certain kind of hope while others lament that this hope is hollow (see, e.g., Rosenberg, 1991). Compare: “In any event there is nothing judicially more unseemly nor more self-defeating than for this Court to make in terrorem pronouncements, to indulge in merely empty rhetoric, sounding a word of promise to the ear, sure to be disappointing to the hope” (dissenting opinion in Baker v. Carr, 1962, p. 270); “But it is the function of the courts to provide relief, not hope” (Justice Scalia dissenting in Vieth v. Jubelirer, 2004, p. 304).


23. As the famous myth surrounding Socrates’ death reveals, even unjustified laws demand our loyalty (to the death). Modern thinkers, such as Rawls, suggest that if the law’s are deeply immoral, civil disobedience is morally legitimate, but acknowledging that it would be legitimate for the law nonetheless to punish those who chose that cause of action. In this respect, our loyalty to the law is not so dissimilar to our loyalty to an individual, who might (on occasion, or, as Harry Lime demonstrates, generally, act immorally).

24. Or put slightly differently, assuming that the judge uses the rhetorical devise of the “reasonable person” in order to decide a legal question, is the legally constructed reasonable person one that is sensitive to all loyalties, and therefore her decision is the reasonable one all things considered, or is the reasonable person one that cares only about parts of reality – the parts deemed relevant by the law? For an examination of “the reasonable person” in a similar context – one dealing with the spousal loyalties to the law, to the spouse, and to self-interest, see Regan (1995) and Warner and Luzzi (2006).

25. See, for example, the incident in 2004 when the New York Times reporter Judith Miller did not reveal her sources. The last procedure on this matter is In re Grand Jury Subpoena, Miller (2005).


28. Voice-over, Greene (1988, p. 12): Facing such disorder, the occupying powers sought to establish order. Yet since order required control, and there was agreement as to which power should be granted such control, the city was divided into zones – American, British, Russian, French, and to ensure a balance of power amidst these powers, an International Zone, at the center of the city. While achieving a certain degree of order, this “crazy patchwork” of zones nonetheless ensured that another manifestations of chaos emerged, as people and goods negotiated between the zones.

29. The film’s opening scenes pay homage to Vienna’s great cultural symbols – the architecture and the statues – only to depict the decline of the culture into racketeering and lawlessness.

30. In this case, people could refrain from any assistance to the authorities, as the situation in post-war Vienna reveals.


32. A reference to the cultural norms of the “old days” is apparent by the intervention of Anna’s neighbor, who laments, in German, that it is uncivilized that men enter in the middle of the night to a lady’s domicile, pursuant to Colloway’s visit.
to Anna’s apartment. Her intervention is portrayed as almost irrelevant, given the
new realities and the lack of cohesive community norms (Greene, 1988, p. 44).
33. “All strangers to the place, none that could speak the language.” This is how
the occupying powers are described at the outset of the film (id., p. 12).
34. Even Martins expresses such suspicions regarding Collway’s standing as
the representative of the rule of law. “You some sort of policemen?” Martin asks the
Colonel upon their first meeting. “I don’t like policemen” (id., p. 26).
35. “The porter knew so little and they murdered him,” says Anna (id., p. 68).
The old residents of Vienna prudently care more about the lack of decorum. The
repeating complaints of an old woman about the noise and the manner in which the
British conduct their business – “The way they behave – breaking in like that . . .” –
are more typical of the community members’ response to the situation (id., p. 47).
36. The difficulties facing law in fractured communities is not confined to post-
war Vienna. See Keitner (2003).
37. Harry could have reacted in the same manner in which Col. Calloway
disposed of Anna’s problems. Harry could have claimed that Anna was used as a
tool by Col. Calloway and therefore Harry’s own treatment of Anna deserves the
same moral evaluation; he treated her no worse.
38. See, for example, Aquinas (2006).
39. See also Naremore (1998, p. 76).
40. The tension between the loyalty to law as representing “our community
norms” and the law as representing “the norms of humanity itself” is very much with
us today. This matter is demonstrated in questions such as the legality of the war in
Iraq, the legality of the fence between Israel and the West Bank, and the legality of
the Iranian program to enrich uranium. As these matters are debated in international
fora invested with legal authority under international law, the national communities
reject their determinations at least in part because it is supra-national, that is, not
stemming from a conception of a sovereign.
41. For anti-globalization and pro-globalization reviews, see Bhagwati (2004),
Madeley (2003), Mandle (2003), and Gwynne, Klak, and Shaw (2003). For general
law and globalization discussion, see Santos and Rodriguez-Garavito (2005) and
42. “In these days, old man, nobody thinks in terms of human beings.
Government don’t so why should we?” (Greene, 1988, p. 98).
43. For an interesting discussion of “legal absence” and its application to
international law, see Lauterpacht (1933, p. 64). For an analysis of this position, see
44. By “law” here we do not mean only the presence of legal norms, but refer to
the scope of the legal domain as such. The question we address is thus sensitive not
only to the sparseness of legal regulation of a certain social area, but also to the
question of whether that area is “captured” by the legal domain at all.
45. For a general review on Law and Film, see Machura & Robson (2001, pp. 3–8),
Bergman and Asimow (1996), Black (1999), Greenfield, Osborne, and Robson (2001),
and Reichman (2008).
46. See Almog and Aharonson (2004).
48. For an in-depth discussion of the relationship between the aesthetical dimensions of law and cinema, see Mussawir (2005).


52. The Third Man places itself as part of the tradition by including attributes – akin to footnotes – to previous films of the genre. Notable among these is the attribute to Fritz Lang’s M (1932): in M the murderer carried balloons (with which he seduced little girls), his shadow looming large. While the trap for Lime is ready to spring in The Third Man, a balloon-man appears, his shadow large and looming (Greene, 1988, p. 111).

53. The cinematography plays a crucial role in framing and constituting the ethical dilemmas: With the light, music, close-up, the use of the voice-over, the subjective camera, and choice of location we frame our feelings or attachment toward the different characters as a basis to our empathy and loyalty. See Telotte (1989, pp. 88–102). We sense the possible gradations of grey and, to an extent, of evil itself.

54. The use of the camera and light in the movie is often an indication that we see only part of the “real” picture. This is often achieved by introducing visible shadows to the frame – that is, treating the shadow as an entity or veiling the object with a shadow – or by changing the angle of the camera so that the frame is slightly diagonal thereby causing a degree of disorientation. A close examination of the scenes reveals that the cinematography of the film is rather consistent: Whenever the film alludes to Lime’s clandestine and criminal operations the camera participates in the discussion by raising on shadows and skewing the frame. This is true from the first conversation Martins has with Lime’s neighbor to the last scene of the chase. Perhaps the scene where this is most apparent is when Lime is revealed: A shining shoe is sniffed by Anna’s cat; the figure is dark and suddenly the face is revealed by the lights of a passing car, half-smiling, only to disappear in the ensuing darkness. Critics have also noted the film’s fast-cutting rate (an average shot length of 5”, and of its 1,253 shots only a handful – approximately 9 – can be considered long takes). See Totaro (2002). This effect contributes not only to the film fast pace, but also to the sense that in any given moment we are not privy to all the information as the shot cuts and takes us somewhere else.

55. Needless to say, a different use of black and white cinematography can generate a rather different representation of the human condition as demonstrated by westerns, melodramas, comedies, and other genres prevalent in the black and white era.

56. See Place and Peterson (1974).

57. It should be noted that Greene’s ending differs from Reed’s. In the original ending, Martins and Anna hug in the cemetery. In Reed’s, Anna walks past Martins without looking at him at all. It is unclear whether Greene’s ending is necessarily “happier,” since the final hug could in fact be melancholic, signifying loss and appreciation that their love could never be fulfilled given Lime’s shadow, but nevertheless, Greene’s is at least consoling while Reed’s ending is
colder, detached, and more in keeping with the film’s noir character. For elaboration of the differences between the novel and the film, see Naremore (1998, p. 80).

58. Realism in general is tightly connected to the film noir genre. Fancy and fantasy, the opposite of realism, brought with them the decline of the film noir genre. See Richardson (1992, p. 2). However, film noir, loyal to its interplay between the seen and the unseen, the light and the shadow, is not fully committed to realism in the sense of documenting reality; the noir artistic conventions make use of the mise-en-scène in order to alert us that we are not privy to all that takes place, and that the cinematic scene we are observing is, to an extent, staged.

59. For a general call to expose law’s operation beyond its black letter, see Llewellyn (1960). For an analysis of the relationship between the cultural study of law and legal realism, see Sarat and Simon (2001).


61. The term law noir was coined by Rosenberg, to denote a subset of film noir movies that depict law or legality in a noir fashion. See Rosenberg (1994, pp. 343–344), note 9. We take the term a step forward by removing it from the cinematic set and suggesting that law noir is an approach to the practices of law itself. This approach is sensitive to the presence of shadows and ambiguities – linguistic and moral – and to a certain mental state of disillusionment regarding some of the legal myths. On a grander scale, law noir suggests that the presence of “the law” at large could also be understood as casting shadows on neighboring domains, thereby obfuscating the boundaries between law and other domains and suggesting that areas of intersection may exist, where normative reflections (or poetic sensitivities) may overlap.

62. Put differently, the noir aesthetics sheds light on the importance of shadows. While for there to be a message (or distinct meaning) some communicative elements must be “seen” (i.e., be illuminated), each statement also casts a shadow on its surrounding, thereby placing elements in its vicinity in darkness. This representation of social reality is, of course, relevant to our understanding of law as a normative order. For the law to operate it must convey rules – bright rules – that aspire to clarify the social sphere under regulation and remove doubt. However, a noir understanding of the legal domain (and, for that matter, of any domain), suggests that the presence of a legal norm also cast shadows, namely generates areas of ambiguity. Such shadows, or ambiguity, refer both to the meaning of the legal regulation on point, and to the moral evaluation of the norm (on its face or as applied). Whereas from an internal viewpoint the legal domain seeks to eradicate these shadows of ambiguity (or to ignore their existence), the claim of law noir is that such ambiguities are part and parcel of the legal domain and the normative legal order.

63. See the famous words of Leff (1979, pp. 1248–1249), arguing that legal realism, while shaking the foundationalist approach to the law, nonetheless seeks to retain assumed ethical foundation.

64. See Gribble (1998, p. 239).


66. It should be noted that the film was one of the first to be shot on an outdoor location and not in a fancy indoor studio (Sinclair, 1988, p. 5).
67. Paul Schrader wrote about the post-war realism of the film noir “... Placing it where it more properly belongs, in the streets with everyday people.” See Grant (1995, p. 216).

68. Martins is made to change his mind and aid the authorities after Collaway “casually” stops on the way to airport and shows Martins the result of Lime’s crimes. The camera takes part in the manipulation by not showing us what Martins sees, only his reaction. Thus, we are left to imagine the horrors Martins’ eyes have witnessed. If Martins was trapped by his sense of justice coupled by his desire to assist Anna, Lime was trapped by thinking that his friend Martins shares his self-interested approach to life or, at the very least, shares the common attitude in Vienna of minding one’s own business and not going out of one’s way to help the authorities. The camera’s role in Lime’s trap is also obvious: The town is empty but full of shadows, silent but ominous and ready to spring. This is achieved by a set of shots – again, with a skewed angle – that portrays all the elements of the trap set in place Greene (1988, p. 6).

69. The theme that the law is limited, and justice is to be found outside the law, is a common theme in non-noir post-war movies, and has received a notably warm embrace by Hollywood Westerns. See, for example, To Kill A Mockingbird (1962) and The Searchers (1956). But see the interplay in Three Godfathers (1948), a remake of a 1916 film.

70. Popescu to Martins, explaining that he helped Harry fix Anna’s papers. “Not the sort of thing I should confess to a total stranger, but you have to break the rules sometimes. Humanity’s duty” (Greene, 1988, p. 59). It is clear that Popescu’s notion of “humanity’s duty” is not necessarily related to high ethical standards or the requirement to protect human rights. He could be understood as suggesting that rules have to be broken simply for the sake of breaking them. In any event, it appears his reference to “humanity’s duty” in the context of the film is cynical.


72. See, for example, The Guns of Navarone (1961), and somewhat ironically, The Dirty Dozen (1967).

73. See Almog (2001).

ACKNOWLEDGMENT

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Conventions

Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631.
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