

‘Riddle me this...?’ Would the world need superheroes if the law could actually deliver ‘justice’?

Cassandra Sharp

As an entertainment and cultural icon, the costumed superhero pervades our culture, and superhero imagery (in both literary and visual forms) is ubiquitous (Morris and Morris 2005: ix).¹ Superhero stories present and explore many important and pressing concerns such as ethics, justice, crime, punishment and social responsibility. Originating in the visually stimulating form of comic books, superheroes have transitioned well into other forms of popular culture – ranging from children’s animated television series (such as *Superhero Squad* or *Spectacular Spiderman*) through to the slick special-effects laden Hollywood productions (such as *Iron Man* 2008, *Fantastic Four* 2005, *The Avengers* 2012) and the oft-times violent and explicit ‘mature audience’ cinematic portrayals (such as *Watchmen* 2009). In any format, superheroes are generally set apart not just for their special powers or impressive gadgets, but for their fearlessness in the face of betrayal, chaos and destructive violence. They ‘pursue justice, defending the defenceless, helping those who cannot help themselves and overcoming evil with the force of good’ (Loeb and Morris 2005: 11). By their very existence, superheroes provide an ‘interrogation’ of law’s legitimacy (Bainbridge 2007) and is the superhero’s fixation on securing criminal ‘justice’ that is the focus of this article. In particular, the article contends that the superhero’s persistent

vigilantism as a quest for justice is based on retributive concerns that are manifested within a contemporary popular imagination.

Focusing on the vigilantism of comic book heroes Batman and Daredevil, part 1 of this article begins with a discussion of the mythos of superheroes and then progresses to explore how the very concept of a superhero predicates an assessment of the efficacy of criminal justice and punishment. More than simply arguing that every instance of a caped crusader *taking the law into their own hands* represents a gradual erosion of the legitimacy of the law to effect justice, this article further demonstrates how superheroes narratives raise questions about what we think 'justice' actually is, and the relationship between justice and law. Proceeding from this basis, in parts 2 and 3 I question the way contemporary punishment theory conceptualises notions of criminal 'justice' by juxtaposing a societal view of justice (upon which the legal system operates) with that of the individual (which drives the superhero narrative). I contend that a conception of justice, which solely occupies the public imagination when they read or watch a superhero narrative, is an individual sense of justice that incorporates the idea of retribution. It is this framing of events within a retributive context that provokes outrage and ire when offenders/'bad guys' do not seem to 'get what they deserve'. The cry for justice in these instances comes from a desire to hold individuals responsible for their actions. Within this framework, in part 4 I will problematise notions of retributive justice within a non-fiction setting by sharing some examples from recent focus group research. These examples will demonstrate a public discomfort at the disconnect between law and justice, and a public desire for justice that is only defined in relation to the retributive function of law.

1 Law and The Superhero Mythos

Since the late 1930s, superhero mythology has given life to stories of crime, justice and power in the vivid pages of comic books, and more recently, in film and television. More than just providing hours of entertainment, these comic book heroes convey perspectives on societal crime and justice that permeate our consciousness and

impact our response to law. Over the last two decades scholars from a variety of disciplines have turned their attention to the ideological issues pervading superhero comics (Reynolds 1994, Fingerroth 2004, Morris and Morris 2005, Phillips and Strobl 2006, Kavaney 2008). Significantly a common mythos evident in these comics is the superhero's epitomisation of the fine balancing act between 'idealisation of justice and the realisation of urban crime' (Vollum and Adkinson 2003: 97). It is ultimately the quest for 'justice' as a ready-made solution to criminality that dominates the superhero mythos. This quest constitutes not only the central axis upon which the story spins, but also the lens through which the audience will critique the law.

This connection between storytelling, images and law is really no longer a novelty: 'we are well into – and may be nearing the zenith of – an era in which “legal storytelling” and “narrative jurisprudence” have become a focal interest in contemporary jurisprudence' (Elkins 2004: 826). Indeed, it has been argued that law 'exists in images and that we make sense of reality by drawing upon the stories and storytelling modes' that are most popular among us (Sherwin 2004: 88). Images of superheroes are no exception: the interactions and motivations of a superhero in responding to an ineffective legal system and increasing modes of criminality will enable us to transform normative understandings into expectations of the legal system. This goes to the heart of Sherwin's 'cinematic jurisprudence' and it equally applies to comic book superheroes that can provide 'a way of understanding significant shifts in modes of knowing and being in the world' (Sherwin 2004: 90). By serving as an 'important source of normative vision' these stories of justice through the vehicle of superheroes can help us to 'understand the way things are (or how we perceive them to be), how life is lived now, so to speak, and how we might learn to live better, more wisely' (Sherwin 2004: 90). The superhero stories can therefore frame and contextualise a human debate on punishment philosophy and justice, and an ideological approach to them becomes useful for portraying and reflecting a 'monomyth' towards justice (Campbell 2008).

Joseph Campbell's work on the heroic mythos has had a profound

impact on the production of fictional superhero narratives over the last several decades and his description of the 'Hero's Journey' or 'monomyth' reflects a fundamental paradigm of the human experience (Campbell 2008). Relying in part on the psychology of Carl Jung, Campbell argued that the monomyth (with its 3 stages: departure or separation, initiation and return) represents a shape-shifting yet constant tale (Campbell 2008: 3) of the hero's struggle and triumph, their personal growth and transformation, and most importantly, their fulfilment of a *quest*. This mythological path of the hero is extremely prominent in superhero stories that seemingly provide a continuous stream of quests to fulfil. Whether it is to remedy a deficiency in the law, or to protect against evil threats, this article posits that the overwhelming catalyst for a superhero's monomyth is the desire for justice – to restore peace and legality in a world where criminality has become the norm. In essence, the communal crying out for justice in this mythos becomes the 'elixir' to which the superhero strives to win (Campbell 2008: 211). This 'elixir' of justice entreats the superhero into the 'call to adventure' (Campbell 2008: 41) in order to provide the community its much-needed solution to rampant crime and corruption. According to Campbell, it is only after the superhero successfully endures the ordeal of initiation (tests and trials) and returns with the 'elixir' that resolution and restoration can be achieved. I argue that the vigilante superhero (such as Daredevil and Batman) is defined by a retributive desire to acquire this elixir of justice and that it is this very aspect of the monomyth that resonates most strongly with an audience coming to terms with justice desires. That is, the superhero monomyth provides a vivid symbolisation of a natural human quest for justice. Just like that of the superhero, the journey for human beings to find justice is similarly predicated on retributive desire because the ordinary world does not seem to provide an adequate connection between legal process and justice. This provokes a call to adventure – to change, to reform, to transform – all in the name of seeking the elixir of justice. The superhero narrative therefore has relevance to the quest of public imagination as it provides a familiar vantage point from which to contemplate an increasing penal populism.

1A Cultural Legal Studies and Populist Punishment

The punishment of criminal behaviour in contemporary life attracts enormous public attention and debate, particularly when sentencing is viewed as too lenient. The typical catchcry from the media ‘Where is the justice?’ has led to a current concern that the criminal justice system is experiencing a ‘crisis of confidence’ (Bathurst 2012: 3). Implicit in this ‘crisis’ is a rebuke of the efficacy of the legal system, and a questioning of the role of law in achieving justice. But what actually are the expectations and assumptions of the public in relation to the promotion of justice by law? And how do they arise? In recognition that most people receive their information about the criminal justice system through media and popular culture (NSW Law Reform Commission 2007: 5.3), it seems prudent to explore the role that popular culture might have to play in the public (re)imaginings of ‘justice’. In particular, with recent research consistently demonstrating that ‘most people think that sentences imposed by the courts are too lenient’² and ‘would therefore support increasingly punitive penal policies’,³ this article seeks to use the lens of cultural legal studies to juxtapose vigilante superhero ‘justice’ with a popular conception of criminal sentencing.

A cultural legal studies approach to this research recognises that public imagination is put to effect through storytelling and therefore seeks to examine the stories as portrayed in the cultural artefacts of popular culture. In this research, those cultural artefacts include the superhero narratives of comics and film and the stories individuals (re) tell each other about those ideals and themes. The cultural legal studies approach therefore incorporates a variety of perspectives. One such perspective is cultural criminology which ‘rejects the positivist notion of objectivity in favour of a focus on the meanings of symbols and styles within particular cultural and subcultural frameworks’ (Phillips and Strobl 2006: 305). Another perspective is cultural discourse analysis which utilises the nuances of language and communication to consider public attitudes and values within discursive constructions (Barker and Galasinski 2001: 27). Using this cultural legal studies methodology to explore mediated superhero images in both comics and film, this article

suggests that there are similar ideological themes pertaining to crime and justice in the stories of justice existing in popular imagination. I will argue that a desire for retributive justice as represented in the actions and motivations of superheroes is equally evident in a public rhetoric that includes ‘signs and symbols of crime and justice relevant to everyday life’ (Philips 2010:27).

2 The vigilante superhero: a necessary ‘antidote’ to the law?

‘Justice is Blind – but it can be heard’

-Matt Murdock, aka Daredevil

Implicit in the superhero’s activity as ultimate crime-fighter is the assumption and expectation that only they can do what the law cannot. Whether as a super-powerful enhancement to the law – such as Superman fighting crime with the sanction of the law – or as the vigilante existing to remedy injustice without the co-operation of the official justice system – such as Batman and Daredevil operating at times in contradistinction to law enforcement agencies – the superhero adopts a heroic status based on a desire to fix a system that is broken and not only unable to provide *true* justice, but at times constituting in of itself an obstruction to justice. As Manderson argues the ‘superhero’s preparedness to act against and despite due process and law is surely an implicit – indeed, increasingly an explicit – critique of the established order’s ability to achieve justice at all’ (Manderson 2011: 11). This is the essence of Matt Murdock’s comment above: the court of criminal law lacking in sufficient evidence may be symbolically *blind* to the truth of a ‘clearly guilty’ criminal, but Daredevil (a literally blind superhero) can *hear* the call to remedy this failing and provide the justice via alternative methods. Just as with deficiencies in sensory perception, where the weakening of one sense enables another to step in and more acutely ‘pick up the slack’, so too it would seem with the law: the superhero takes up the weight of exacting justice because the law is deficient.

Indeed, more than just exposing a weakness in the law, the superhero embodies the possibility of an antidote to law's failings: they pursue and violently punish criminals because the authorities are outgunned, incompetent or corrupt, and impotent to redress criminal wrong-doing.

The very existence of the superhero therefore presupposes that justice has not and cannot be achieved in the legal system. This is not a new argument; other scholars have suggested that the mere necessity for extra-legal solutions to crime in the form of these superheroes unequivocally points to an inadequacy in the law (Bainbridge 2007; Peters 2007; Manderson 2011). Bainbridge in particular has argued that from the time of their conception in the 1930s, superheroes have been a mechanism through which to personify the inherent tensions in the law, and that the very nature of the superhero provokes an interrogation of the relationship between law and justice. (Bainbridge 2007: 457). Phillips has also argued that 'the inadequacy, and at times incompetency, of legitimate law enforcement is the *raison d'être* for superheroes' (Phillips 2010: 29). While this article begins from the same premise – that the law is inadequate and in need of a superhero – it seeks to explore the implications of that premise in retributive justice discourse. That is, if the antidote to law's failings embodied in the vigilante superhero points to a disjunction between justice and law, then it is important to explore how the 'justice' that is supposedly provided by the superhero is popularly understood and articulated. More pointedly, we must question their capability to actually provide this 'justice'. I will begin such an examination through a brief exploration of the role of vigilantism in redressing law's inadequacies through the characters of Daredevil and Batman.

2A Vigilantism and the State of Exception

Both Daredevil and Batman invite us to reconceptualise traditional images of superhero action: 'they don't merely engage in self defense against imminent threats, they go out looking for the bad guys' (Skoble 2005: 32). In both comic form and in cinematic presentation, Daredevil and Batman consistently assume the role of the vigilante by violently

taking the law into their own hands and demonstrating the failings of criminal justice through their retributive actions. Vigilantism is commonly viewed as the use of violence to impose social control or to achieve popular justice (Taslitz 2004: 702). This involves acting outside the law when the law enacted by the state is seen as broken in some way: morally wrong, inadequate to the task, or nonexistent. An important element of the rule of law is that the pursuit and punishment of wrong-doing is the delegated task of a state legal system. Yet, vigilantism is often justified from a Judeo-Christian worldview, where battles between good and evil necessitate the transcendence of justice above the rule of law (Phillips 2010: 29). Indeed, based in an ideology of popular sovereignty, instances of vigilantism are justified on the basis that exceptional circumstances allow the people to put aside the rule of law. Viewing the people or communities as the real sovereigns this means that 'whenever those to whom they have delegated authority fail, it is the people's right to take back that authority into their own hands' (Taslitz 2004: 703) and declare themselves to have an exceptional status in relation to the law. The vigilante autocratically assumes responsibility for societal power and authority on the basis that not only do the circumstances warrant such exceptional action, but that popular sovereignty demands it. As such, the vigilante diverges slightly from Agamben's (2005) 'state of exception' where governmental powers are increased during times of emergency or crisis. In superhero narratives as explained above, it is a common motif that in the face of genuine evil and when the rule of law fails, it is only someone 'with courage and strength enough to transcend the legal order' (Jewett and Lawrence 2003: 29) who can provide what the popular sovereignty needs; the legal system's inability to cope or deal adequately with crime is all the justification needed for the vigilante superhero to leap (or bound or fly) into action. The autonomous extra-legal actions employed by the vigilante superhero on behalf of the community represent a temporary 'vote of no-confidence in state efficiency' (Taslitz 2004: 703). As explained by Manderson, the superhero does not

promise justice by thinking in terms of rules or democracy. Instead they respond uniquely to the call of the singular circumstances before

them. It is their character and their power rather than their role or training or their community that ensures they are capable of bringing justice where law and society are at their most impotent (2011: 11).

2B Daredevil: 'The Man Without Fear'

A vigilante responsibility is something that 'super-lawyer' Matt Murdock feels keenly. Murdock was raised in New York's Hell's Kitchen, where, as a young boy, he accidentally crashed into a container of radioactive waste. Although blinded by the accident, his other senses are enhanced to a superhuman degree. He can hear conversations from streets away and has a developed radar sense where sounds are transformed into virtual sight. His exceptional hearing also makes him a human lie-detector who can tell by the sound of a person's heartbeat whether they are speaking truthfully. When his father is murdered by Wilson Fisk, the Kingpin, who is never 'brought to justice', Matt vows to keep a pact he made with his father to be fearless and to 'seek justice – one way or another'.⁴ After the passing of a decade Matt is fulfilling his promise by working through the day as a criminal defence attorney who only takes on innocent clients. As a lawyer defending the helpless, Matt is acutely aware that the legal system sometimes fails in its duty to punish wrongdoers and so he determines to deliver the appropriate justice himself as Daredevil. Daredevil is represented as 'The Man without Fear' – a masked avenger who is not only interested in justice and truth (Bainbridge 2007: 459) but is upheld as the only one capable of actually obtaining it. In the film version, *Daredevil* (2003), Father Everett (Derek O'Connor) comments that as 'Daredevil' Matt (Ben Affleck) can be 'A lawyer during the day, and then judge and jury at night'. The implication is that through the duality of his personas Matt can achieve a deliverance of retributive justice that often escapes the rigours of the law.

In a red-leather jumpsuit, complete with horned mask and a 'billy club' Daredevil deals out this retributive justice by brutally 'bringing blood, broken limbs, mutilation, even death, to the evil hordes who oppose him' (Taslitz 2004: 701). This is also evident in the more

recent Daredevil comic series. In *Here Comes Daredevil* (Issue 4: 2011), Matt Murdock's legal practice is suffering as a result of his outing as Daredevil, yet he does not stop fighting for the underdog or downtrodden: 'I can't stand by and let clients I believe in go without justice'. He continues to articulate the benefits of his dual persona: the mob boss 'doesn't yet realise that he's got both sides of me bearing down on him ... vigilante and lawyer'. His retributive actions on the street, outside the law office and courtroom, thus demonstrate that the superhero's existence not only becomes another way of suggesting that the law's rationality is stifling and limiting (Bainbridge: 463) but it also suggests that justice is preoccupied with the notion of just desserts.

In the film adaptation of *Daredevil* it is clear that Matt's idea of 'justice' is focused on the guilty being appropriately punished for their wrong-doing. This is especially evident in the way he treats those he knows to be guilty but whom have escaped a legal conviction. In one scene, while cross-examining a particularly unsavoury character accused of raping his client, Matt can sense that the testimony is perjured. In his disgust he comments to the accused: 'For your sake I hope justice is found here today – before justice finds you'. Murdock's false concern for the accused belies the knowledge that the 'justice' of the legal system would or should be more preferable to the accused than the 'justice' he will administer outside the courtroom. In a style close to the superhero mythos, the accused scoffs at any such suggestion from a blind man but of course, he later meets his violent demise at the hands of the 'other' judge and jury: Daredevil.

It is here that the justification for vigilantism is on view and we can identify a retributive desire: 'Where the state fails to bring justice because of corruption, politics, turf battles, or incompetence, Daredevil brings righteous retribution...' (Taslitz 2004: 701) on behalf of the community. Daredevil acts where the state cannot and, for the sake of the community, does what the law cannot do, namely, separating the guilty from the innocent and administering punishment where it is due. It is this populist notion of punishment or retribution that the vigilante superhero is most interested in promoting; it is also that which

the community and the audience understands and finds satisfactory. Representing a retributive crime control model of justice, the vigilante superhero rests on the 'just dessert' notion where individuals are held responsible and accountable for their acts. Retribution is a 'cleansing social ritual for the community and a means of communicating moral norms to the offender' (Phillips and Strobl 2006: 309). 'The punishment is designed to send the message of just how wrong the offense was' (Phillips and Strobl 2006: 309). As such, the superhero becomes the self-designated speaker of the community, sent to represent this message under the rubric of resolving injustice satisfying crime control ideals. Empirical studies (Reyns and Henson 2010, Adkinson 2008) have shown that crime control (coupled with punishment as dessert) is the dominant theme in most superhero comics and therefore these texts 'support vigilantism so long as the end justify the means' (Kort-Butler 2012: 567). This is particularly evident in Batman comics where the corruption of the law enforcement agencies themselves provide justification for his retributive vigilantism.

2C Who appointed the Batman?

'As long as it takes. I'm gonna show the people of Gotham that their city doesn't belong to the criminals and the corrupt'

– Christian Bale as Bruce Wayne in *Batman Begins* (2005)

Gotham city is an urban dystopia with a vibrant criminal underworld. In the seeming absence of effective law enforcement, criminals have 'taken control of the city, leaving a volatile and chaotic atmosphere in their wake' (Phillips 2010: 27). Coming from a background of vengeance and violence, Bruce Wayne sees the desperate need in Gotham for a superhero and he emerges as Batman in order to fulfil a childhood covenant (similar to Matt Murdock) that he will avenge his parents' deaths and fight all injustice. In *Batman #47*, an origin story originally published in 1948, Bruce declares, 'I swear I'll dedicate my life and inheritance to bringing your killer to justice ... and to fighting all criminals! I swear it!!' (Vollum and Adkinson 2003:99). In doing

so, Batman clearly operates outside the law and exhibits a retributive style of justice based wholly on the use of violence.

In the film *Batman Begins* (2005), which tells another origin story of Batman and his engagement with crime in Gotham, Bruce Wayne (Christian Bale) is angered over the paroled release of his parents' murderer and he laments the brokenness of Gotham's corrupt and ineffective legal system. Bruce's childhood friend, assistant district attorney Rachel Dawes, argues that although the supposedly impartial system of the law needs to be upheld, it can only be done so by people with integrity who are willing to stand up against injustice. While claiming that Bruce should not see justice as revenge, she implores him to transform his life from that which is spoiled, rich, and vengeful to being more focused on motivating, inspiring and advocating for change. She asks 'What chance does Gotham have when the good people do nothing?'. Immediately after this, Bruce leaves his home in Gotham and embarks upon a quest to 'seek the means to fight injustice'. Bruce purposely learns the art of criminality, eventually spending time in a Bhutanese prison. His goal is to transform into more than simply a mouthpiece for justice, but rather the extra-legal exception that will make the law effective. In *Batman: Year One* (originally published in 1986), in which Frank Miller and David Mazzucchelli provide a contemporary context for Bruce Wayne's transformation to Batman, violence and fear are clearly the primary tactics chosen to bring to life the vigilante's success. Having waited 18 years since the murder of his parents – which he describes as the moment when 'all sense left my life' (Miller and Mazzucchelli 2005: 21) – Bruce pointedly chooses the symbol of the bat as the mechanism through which he will instil fear and deal out his particular brand of justice. And so begins his tirade against the villainous and corrupt that occupy all levels of the Gotham city administration: 'You've eaten Gotham's wealth. It's spirit. Your feast is nearly over. From this moment on ... none of you are safe.' (Miller and Mazzucchelli 2005: 38).

The need for Batman to continue operating in his exceptional status is no more obvious than in *The Dark Knight* (2008) – the film sequel

to *Batman Begins* – where it is clear that without Batman providing his extra-legal ‘justice’ the crime lords that menace Gotham would render the city uninhabitable. In a town where criminality sets the tone, the desire for justice is keenly felt. Despite his important role as Batman, Bruce exhibits a level of discomfort in having to be continually operating outside the law, and the film depicts his attempt to relinquish his exceptional status on the basis of a desire to see the rule of law returning to normal operation. In one scene, District Attorney Harvey Dent (the public face of the law) is engaged in a philosophical discussion with Bruce about the need for a public hero. Interestingly, Dent believes that Gotham city is relieved but proud to have Batman as the superhero vigilante ‘standing up for what is right’ and fighting the ‘scum’ of the city. Playing the devil’s advocate, Bruce asks, ‘Who appointed Batman?’, to which Dent replies that as it was the community who stood by and let the criminals take over and therefore impliedly gave Batman the exceptional status and authority. It is this very idea that legitimates vigilante violence as an element of the popular sovereignty referred to earlier – Dent argues that Batman’s existence is necessary while-ever the rule of law does not promote justice but instead allows criminality to reign: What chance does Gotham have when good people do nothing? Instead, they call on a superhero who is actually able and willing to provide retribution where it is long overdue. From ‘the Bat Bunker comes individualized, American-style retributive justice’ (Phillips 2010: 40) providing a seductive resolution to an inadequate justice system.

By constituting himself as an agent of violence and retribution, skirting the periphery of the rule of law, Batman’s actions clearly indicate that central to his ideology of justice is the notion of just dessert. Precisely because the reigning criminal element seems to ‘get away with’ its villainous and destructive activities, Batman seeks to remedy this ‘injustice’ and provide retribution. By invoking the idea of justice in the absence or inadequacy of law, and transmuting this to retributive acts, *justice* then seemingly becomes something more tangible than law. This of course, suggests ‘that justice may be something quite apart from the law, something that exists outside the legal system’ (Bainbridge

2007:460). Indeed to view justice as transcendent and wholly imminent, as Derrida (1992) posits, we might question whether the retributive vigilantism that the superhero pursues as justice can provide satisfaction or is even effective. Kamenka argues that justice ‘rests on the tension or contradiction between what is and what at least some men think ought to be. It represents or presupposes a criticism of an existing reality or state of affairs allegedly in light of principles or an ideal-end state’ (Kamenka 1979: 1). The vigilante superhero narrative thus resonates with contemporary audiences primarily because it provides an opportunity to engage with an individual, contingent retributive notion of punishment that seemingly addresses the deficiencies often found with the rule of law. The next section explores the possibility however that in our contemporary legal system this may never be achieved.

3 Justice as Punishment – Can it satisfy our desires?

In the Australian criminal justice system, the question of guilt is paramount, together with the infliction of punishment upon the person found guilty of having transgressed the law. Indeed, western criminal law grew out of medieval canon law where justice required ‘that a violation of a law be paid for by a penalty’. This retributive system of justice was based largely on the theological teachings of Anselm, a lawyer born in 1033CE whose position was that ‘the just order of the universe, the. . . .righteousness of God, requires that a price be paid’ (Berman 1983: 179). It is argued that current punishment theory is the judicial archetype of the way in which God deals with sin and crime in Biblical Christianity. Thus, wrongdoing in the secular world is dealt with according to the same principles by which God deals with sin: a transgression of the law (be it God’s law or society’s law) requires a penalty (such as God’s wrath effecting our death or punishment) (Sharp 2011b). In this sense, retribution both deals with the wrongdoing and reflects the justice of the lawmaker. Interestingly, while attempting to dispense the law’s justice through their retributive vigilantism, both Daredevil and Batman inadvertently undermine law’s ability to actually

attain this justice. In both these superhero narratives there is a strong communal sense that the purpose of punishment (and the function of law) *should* be to give the offender what he or she deserves. Indeed, although the High Court of Australia has stated that ‘the purposes of criminal punishment are various ... [they] overlap and none of them can be considered in isolation’,⁵ retributive theory is now the foremost justification for punishment in the Australian legal system (Garvey 2003: 303; Braithwaite 2003: 389). This is not surprising given that

the entire guilt finding process with its focus on *mens rea* is premised on the retributive presupposition that human beings are morally responsible...The retributive position gives the entire criminal process, from criminalisation to adjudication to punishment, a coherence (Tuomala 1993: 229).

As a deontological theory, retributivism is a retrospective justification that links justice with dessert, whereby offenders deserve to be punished with a punishment that is proportionate to the gravity of the offending conduct. A wrongdoer deserves punishment because – and only to the extent that – he or she has done wrong. Retributive theory argues that the state has a right and duty to punish the offender by virtue of their culpability for the offence and so for retributivists, punishment is only justified if it is deserved (Garvey 1999). This evokes a Kantian philosophy: ‘He must first be found to be deserving of punishment before any consideration is given to the utility of this punishment for himself or for his fellow citizens’ (Kant 1797). This of course, is reflected in the superhero mythos where there are many offenders who exist in a prolonged state of being unpunished simply because the state has failed to fulfil this duty. The populist notion of punishment that is invoked within superhero stories resonates with our collective consciousness because we too will seek and demand justice in the face of lawbreaking through state sanctioned punitive measures.

Lacey argues that penal sanctions are not about ‘righting the wrong done in the compensatory sense of making good the loss to the particular victim ... (but are principally about) a collective need to underpin, recognise and maintain the internalised commitments of

many members of society' to the rule of law and 'to acknowledge the importance of those commitments to the existence and identity of the community' (Lacey 1988: 182-3). Punishment then is conceived as a social practice that pursues shared social goals and values, and seeks to satisfy communal desires for substantive justice. This conception of punishment certainly seems to predominate the superhero narrative, media reporting and public scrutiny of supposedly lenient sentencing in contemporary political discourse, and in this way retributive measures become the primary focal point for determining the achievement of justice.

Of course, a social concept of procedural justice, reflecting the belief that all human beings matter equally, remains a crucial aspect of western legal systems. The importance of a right to be heard, or the notion that you are innocent until proven guilty, are each ideological justifications for the operation of procedural justice within our rule of law. But this is not the ideological conception of justice that occupies the public imagination when they read or watch a superhero narrative. Instead, these stories represent an individual sense of justice that fully incorporates the idea of dessert. It is this element that the superhero narrative uses to great effect: tapping into the individual emotive evaluation of what deserves punishment and animating expectations in relation to goals of justice. I argue that the common motifs of the vigilante superhero narrative actively draw upon the retributive desires of public imagination. However, the difficulty with the public imagination being consumed with the notion of justice as dessert is that it is essentially a subjective enterprise that can achieve at best an approximation of 'justice', or at the least a glimpse of what ought to be. The audience is thus caught up in the trap of desire, thriving in the aporia 'that forever separates the obtained satisfaction from the sought-for satisfaction' (Žižek 2001: 90). The vigilante superhero is thus relegated to (at most) giving effect to punitive measures that the law failed to achieve. While this might temporarily satiate communal ambitions for just dessert, it is in fact no more than lip service to a notion of transcendent justice that can never be attained, only always desired.

4 Confessions of the Public Imagination

In recognising that the conflation of justice and punishment is caught up in desire, I have recently become interested in the exploration of a public desire for justice. In particular, I have been focused on the interpretation and transformation of meaning about the intersection of law and justice within popular imagination. This work of the public imagination is one aspect of what Cover (1983) has conceptualised in his idea of the 'nomos' (the cultural world of law). Cover recognised that law is more than just formal institutions. Instead, as a social institution, law includes what people believe law is as well the stories they tell about it (Cover 1983: 4). In this way the nomos is seen to include the stories of law in society that help to legitimise and make sense of law (Cover 1983). The nomos can only be understood in the context of the narratives that substantiate and give it meaning, and so to understand the world of law we must begin to appreciate how individuals conceive of and construct meaning about the law through stories (Cover 1983: 5), such as those (re)told in superhero narratives and those (re)created within public attitudes and perceptions. In taking up the question of how individuals construct desires about justice and law, this research adopts a constitutive perspective about the nomos that Gies recognises as a legal consciousness, 'which firmly situates the law at the heart of everyday life' (2008: 74). Gies acknowledges that people make sense of the world by relying on 'a potentially unlimited range of experiences and narratives' (2008:72). As part of the cultural legal studies approach explained earlier, this constitutive perspective is key to understanding that when people engage with popular cultural forms (such as comic book narratives) they are engaged in the production and the exchange of meanings (Hall 1997: 2) in order to interpret the world (and law) in a meaningful way (Hall 1997: 17). As such, the way forward for contemporary explorations of audience/reader research (Sharp 2012) is to recognise law as indispensable from everyday life (Hall 1997: 17) and to acknowledge that what is important is not what people *know* about the law, but how they *use* it to construct and transform meaning. This is in line with a cultural criminological approach that suggests

that 'realities of crime, deviance, and criminal justice practice cannot be understood outside the context of media' (Adkinson 2008:15). Ferrell and Sanders have for many years explicitly called for the integration of cultural studies and criminology in order to explore meaning and ideology about crime and justice within popular culture and as manifested in public discourse (Ferrell and Sanders 1995). As such, in this last section of the article I demonstrate that the public is extremely active in the process of consuming stories of law in popular culture that include vigilante narratives as one stimulant to the production, transformation and perpetuation of meaning and desire about law and justice.

In my recent empirical research, I devised a pilot study to elicit information about the relationship between stories of justice and the form and substance of public rhetoric. To this end, focus groups were conducted among four different demographics: young adults, retirees, academics, and a mothers' group. In each group, I facilitated discussion around a series of pre-determined open-ended questions that sought to explore everyday understandings in the public imagination about the term 'justice' and its interrelationship with law. The primary methodological aim was to present opportunities for individuals to talk informally about issues of justice and to explore from their perspective how it might interconnect with law. As a way of gaining insight into the transformed and shared meanings of individuals, I have found in my previous research that focus group discussions provide for the articulation and development of ideas and values in a mutually stimulative and spontaneously reactive environment (Sharp 2004, 2011a, 2012).

Methodologically, this research has a basis in cultural studies theory, which advocates the interpretive fluidity of making meaning and supports the 'active audience' paradigm, contending that audiences are active producers of meaning from within a cultural context of their own (Morley 1992). From this perspective it is understood that the viewer/reader does not receive images passively, but actively; although authors may have a message or theme that they want to communicate,

viewers nevertheless decode the meaning for themselves and transform it through the use they make of it in their lives (Spitz 2000). The analysis of the discussions is philosophically based in hermeneutics and concentrates on the interactive relationship between text and audience (Morley 1992, Gadamer 1977, Iser 1976). This perspective involves an interpretive literary analysis where the discussion or “talk” becomes the text from which to unpack the understandings.

As such, the transcripts of these discrete focus groups were seen as an interactive and social narrative, and critical discourse analysis was applied to identify socially shared understandings in relation to key ideas and values surrounding the term ‘justice’. The participants’ ‘talk’ was therefore coded according to various themes and messaging. The preliminary analysis of this data demonstrated a transformation of public retributive desire into expectations of the legal system. Generally speaking, the analysis is unsurprising in relation to an understanding of the concept of justice. Every participant expressed difficulty in explaining or defining justice without categorising it or reducing it to a commonality of expression: for example, equating justice with ‘fairness’ or ‘equality’ or even being ‘just’.

More specifically however, two main themes emerged from the discussions. The first was that these participants believed that while justice can and should be conceived of simultaneously in dual terms (as individual retributive justice concomitant with a utilitarian procedural justice), retribution through punishment is the imperative. That is, while there was recognition that justice is not a complete concept and often intuitively manipulated to suit various contexts, the law’s role was seen to ensure that retributive justice and procedural justice could operate in tandem. Interestingly (and somewhat ironically), this was mostly seen in comments about the tragedy of procedural justice getting in the way of substantive justice and justice as dessert. Take this comment from Justin for example:

...there needs to be justice for criminals as well or for accused people, and we’ve seen a few cases recently where it was through DNA evidence and other things that people have been cleared after years and years

Sharp

in prison and that was a lack of justice, as they've had a whole lifetime stolen from them, so I fully support that, but I think when we also see cases where there's no possible way he didn't do what he did, *it was just through an error in the way it was investigated that he got off*. ... he didn't get what he deserved, and so I think that's a big thing when we see that there's a lack of justice there...he didn't get what he deserved (FG 2: 14).⁶

This example indicates a desire for the law to ensure that society functioned efficiently via procedural justice and effective law enforcement. It also serves to demonstrate that participants consistently referenced a desire to ensure that criminality be dealt with via retributive measures.

The second common theme in the analysis was that the law often does not deliver or live up to its promise to provide justice. This was expressed in the various comments below, which criticise the perceived lack of consistency in decision-making. Without such consistency, there is no possibility of justice:

Bill: The courts are without a doubt, an arse.

Patricia: That's right. It depends on who your solicitor is...you don't always get justice in a court. (FG 4: 3)

Bill: I found that a magistrate's justice and their opinion of justice will vary from one to another, so when you go to court, you are in the absolute lap of the gods. (FG 4: 5)

Bill: You can hear people talking: ...just pray you get up before Justice 'so and so' at the local court, you'll be right, but if you get Justice ____ you'll be in deep shit (clicks fingers) ... so there's no consistency in justice. (FG 4: 6 actual name of Justice omitted)

The retirees' group in particular found this to be a distinct complaint of the legal system and they had plenty to say about the notion of justice being only achievable outside the law. As they spent considerable time reminiscing about life in Australia 40-50 years ago when communities were smaller and held a much greater role in supporting the legal system. On a number of occasions, some of them

expressed the preferable state of justice being achieved outside of the law by the community itself as a method of deterrence. For example, Bill and Matthew each tell stories of neighbours catching adolescents in the act of trespass and hooliganism and the success of vigilante-esque threats to pull the would-be criminals into line:

Matthew: The days of old community justice are gone. Everybody knew each other and if you stepped out of line, somebody else's aunt or uncle would know and then your grandmother or mum or somebody else would soon find out and step in...

Bill: But people can't do that today. Can't just grab them and shove them around... which is much the pity. *And you can't organise justice anymore* (FG 4:12).

This nostalgia for a desired communal order is reflected in the superhero mythos where an idealised past is constructed as 'a model for a hopeful future' (Phillips and Strobl 2006: 308). This is particularly so for Batman whose 'call to adventure' is consistently invoked in order to 'achieve the mythic return of better days, allegedly characterised by infrequent crime and just punishment' (Phillips and Strobl 2006: 308). Retribution appeals to these retirees (as it does Batman) because it is a ritual that symbolically returns society to its original order (Phillips and Strobl 2006: 309).

The above are but a few examples of the desire for justice held by these participants, who seemed to share a general consensus that operating within an imperfect and broken world, it is not surprising that the law sometimes fails, and that this generates a desire for justice that is only defined in relation to the retributive function of law. While there is much work to be completed in audience/reader research and responses to issues of crime and justice, this pilot study provides a small glimpse to the possible public discomfort at the disconnect between law and justice, and perhaps unveils an uneasiness about the efficacy of a punitive criminal justice system.

The participants' desires for justice was portrayed as that of a deep longing to ensure individuals are held responsible for their conduct.

Sharp

This not only correlates with theories of human behaviour in psychology which ‘similarly identified justice as a core need for people’ (Welsh 2011: 460); as discussed earlier, this is also reflected in the vigilante superhero’s entanglement with law and justice which provides another normative concept to offer us a ‘glimpse of what ought to be. ... It presents us with something to aspire to in our own lives. ... because they speak to our nature, as well as to both our aspirations and our fears’ (Loeb and Morris 2005: 16). Superhero narratives are one way in which we can actively engage in our own process of interpretation in relation to justice desires. Each time we participate in the mythos of superheroes and justice, we build on stories we have heard in the past and this contributes to how we individually conceive of law, value punishment and pursue justice. The ever-present Derridean (1992) battles between good and evil; the innocent and the criminal; and chaos and harmony are manifested in and by the superhero as he fights to privilege justice, innocence and order. As the superhero strives to become the agent of justice that the world desperately desires but will never truly obtain, we continue to engage our imaginative life and contemplate important questions regarding justice, crime, punishment and responsibility that inscribe meaning into who we are and inspires hope that one day perhaps we won’t need superheroes at all.

Notes

- 1 This certainly provides one explanation for why my son at age 3 would don a ‘cape’ and run around the house ‘saving the world’ without him ever reading a superhero comic or seeing a superhero film.
- 2 See Indermaur, David & Roberts, Lynne, *What Australians think About Crime and Justice: Results from the 2007 Survey of Social Attitudes*, Research and Public Policy Series No 101, Australian Institute of Criminology 2009; and Jones et al, ‘Public confidence in the NSW criminal justice system’ *Crime and Justice Bulletin* No 118, NSW Bureau of Crime Statistics and Research, (August 2008).

- 3 Gelb, Karen (Sentencing Advisory Council Victoria), *More Myths and Misconceptions* (September 2008), 4; Indermaur and Roberts, 'Perception of Crime and Justice' in Wilson et al (eds) *Australian Social Attitudes: The First Report* (Sydney UNSW Press 2005); Roberts and Indermaur 2009 above n 2, 1.
- 4 This is a quote from the film adaptation of *Daredevil* (2003).
- 5 *Veen* (No 2) (1988) 164 CLR 465 at 476.
- 6 Focus Groups are referred to by number of group (FG) and then the corresponding page number of the quote. Transcripts are on file with the author.

References

- Agamben G 2005 *State of Exception* University of Chicago Press Chicago
- Adkinson Cary 2008 'The Amazing Spider-Man and the Evolution of the Comics Code: A Case Study in Cultural Criminology' *Journal of Criminal Justice and Popular Culture* 15/3: 241
- Bainbridge J 2007 "'This is the Authority. This Planet is Under Our Protection" An exegesis of Superheroes' Interrogations of Law' *Law Culture and the Humanities* 3: 455-476
- Barker Chris and Galsinski Darisusz 2001 *Cultural Studies and Discourse Analysis: a dialogue on language and identity* Sage London
- Hon TF Bathurst, Chief Justice NSW 2012 'Community Participation in Criminal Justice' NSW Law Society Opening of Law Term Dinner 3 (30 January)
- Braithwaite J 2003 'Holism, Justice and Atonement' *Utah Law Review* 1: 389-412
- Berman H 1983 *Law and Revolution* Harvard University Press
- Campbell J 2008 *The Hero with a Thousand Faces* New World Library Novato (3rd edn)
- Cornell D, Rosenfeld M and Carlson D eds 1992 *Deconstruction and the Possibility of Justice* Routledge New York.
- Cover R 1983 'Nomos and Narrative' *Harvard Law Review* 97/4: 4-68
- Deflem M ed 2010 *Popular Culture, Crime and Social Control* (Sociology of Crime Law and Deviance Vol 14) Emerald Group Publishing Bingley

Sharp

- Derrida J 1992 'Force of Law: The "Mystical Foundation of Authority"' in Cornell et al 1992
- Gadamer H 1977 *Philosophical Hermeneutics* Trans D E Linge University of California Press Berkeley
- Elkins J 2004 'Reading/Teaching Lawyer Films' *Vermont Law Review* 28/4: 813-879
- Ferrell J and Sanders C eds 1995 *Cultural Criminology* Northeastern University Press Boston
- Fingerroth Danny 2004 *Superman on the Couch: What Superheroes Really Tell Us about Ourselves and Our Society* Continuum New York
- Freeman M ed *Law and Popular Culture* (Current Legal Issues Vol 7) Oxford University Press Oxford.
- Garvey S 2003 'Restorative Justice, Punishment, and Atonement' *Utah Law Review* 1: 303-317
- Garvey S 1999 'Punishment as Atonement' *UCLA Law Review* 46: 1801-1858
- Gelb Karen 2008 *More Myths and Misconceptions* Sentencing Advisory Council Victoria
- Gies L 2008 'Law and the Media: the Future of an Uneasy Relationship' in Greenfield et al 2008 Routledge-Cavendish
- Greenfield S and Osborn G eds 2008 *Readings in Law and Popular Culture* Routledge-Cavendish Oxon
- Hall S ed 1997 *Representation: Cultural Representations and Signifying Practices* Open University SAGE London
- Hosen N and Mohr H eds 2011 *Law and Religion in Public Life: The Contemporary Debate* Routledge London
- Indermaur D and Roberts L 2005 'Perception of Crime and Justice' in Wilson et al 2005
- 2009 *What Australians think About Crime and Justice: Results from the 2007 Survey of Social Attitudes* Research and Public Policy Series 101 Australian Institute of Criminology
- Iser W 1991 *The Act of Reading: A theory of Aesthetic Responses* Johns Hopkins University Press Baltimore (first published 1976)
- Jewett R and Lawrence S 2003 *Captain America and the Crusade Against Evil: The dilemma of zealous nationalism* Eerdmans Grand Rapids

- Jones et al 2008 'Public confidence in the NSW criminal justice system' *Crime and Justice Bulletin* 118 NSW Bureau of Crime Statistics and Research
- Kane B 1988 *The Greatest Batman Stories Ever Told* DC Comics New York
- Kant I 1965 *The Metaphysical Elements of Justice : Part One of the Metaphysics of Morals* Trans J Ladd Hackett Indianapolis (originally published 1797)
- Kamenka E 1979 'What is Justice?' in Kamenka E 1979
– ed 1979 *Justice: Ideas and Ideologies* Edward Arnold London
- Kaveney R 2008 *Superheroes!: Capes and Crusaders in Comics and Films* I B Tauris London
- Kort-Butler L 2012 'Rotten, Vile, and Depraved! Depictions of Criminality in Superhero Cartoons' *Deviant Behaviour* 33/7: 566-581
- Lacey N 1988 *State Punishment: Political Principles and Community Values* Routledge London
- Loeb J and Morris T 2005 'Heroes and Superheroes' in Morris et al 2005
- Manderson D 2011 'Trust Us Justice: 24, Popular Culture and the Law' in Sarat A 2011: 22-52
- Miller F and Mazzucchelli D 2005 *Batman: Year One (Deluxe Edition)* DC Comics New York (collects material first published February – May 1987)
- Morley D 1992 *Television, Audiences and Cultural Studies* Routledge Oxon
- Morris T and Morris M eds 2005 *Superheroes and Philosophy* Open Court Chicago
- NSW Law Reform Commission 2007 *Role of Juries in Sentencing* Report 118
- Peters T 2007 'Unbalancing Justice: Overcoming the Limits of Law in *Batman Begins*' *Griffith Law Review* 16: 247-269
- Phillips N 2010 'The Dark Knight: Constructing Images of Good vs. Evil in an Age of Anxiety' in Deflem 2010: 25-44
- Phillips N and Strobl S 2006 'Cultural criminology and kryptonite: Apocalyptic and retributive constructions of crime and justice in comic books' *Crime Media Culture* 2: 304-328
- Reynolds R 1994 *Superheroes: A Modern Mythology* University of Mississippi Press Jackson (first published 1992)
- Reyns B and Henson B 2010 'Superhero justice: The depiction of crime and justice in modern-age comic books and graphic novels' in Deflem 2010: 45-66

Sharp

- Robertson M, Corbin L, Tranter K and Bartlett F eds *The Ethics Project in Legal Education* Routledge London
- Sarat A 2011 *Imagining Legality: Where Law Meets Popular Culture* University of Alabama Press Tuscaloosa
- Sharp C 2004 'Changing the Channel: What to Do with the Critical Abilities of Law Students as Viewers?' *Griffith Law Review* 13/2: 185-199
- 2011a "'Represent a Murderer...I'd never do that!'" How students use stories to link ethical development and identity construction' in Robertson et al 2011: 33-51
 - 2011b 'Atonement as Justice in Western Law' in Hosen et al 2011: 151-164
 - 2012 'Let's See How Far We've Come: The Role of Empirical Methodology in Exploring Television Audiences' in Silbey et al 2012: 111-132
- Sherwin R 2004 'Law's Enchantment: The Cinematic Jurisprudence of Krzysztof Kieslowski' in Freeman 2004: 87-108
- Silbey J and Robson P eds 2012 *Law and Justice on the Small Screen* Hart Publishing Oxford
- Skoble A 2005 'Superhero Revisionism in *Watchmen* and *the Dark Knight Returns*' in Morris et al 2005: 43-66
- Spitz D 2000 *Heroes or Villains? Moral Struggles v. Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers and the Legal Profession in Popular Culture* Nova Law Review 24: 725-750
- Taslitz A 2004 'Daredevil and the Death Penalty' *Ohio State Journal of Criminal Law* 1: 699-717
- Tuomala J 1993 'Christ's Atonement as the Model for Civil Justice' *American Journal of Jurisprudence* 38: 221-255
- Vollum S and Adkinson C 2003 'The Portrayal of Crime and Justice in the Comic Book Superhero Mythos' *Journal of Criminal Justice and Popular Culture* 10/2: 96-108
- Waid M 2011 *Here Comes Daredevil #4* Marvel Comics
- Welsh A, Fleming T and Dowler K eds 2012 'Constructing Crime and justice on film: meaning and message in cinema' *Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice* 14/4: 457
- Wilson S, Meagher G, Gibson R, Denmark D and Western M eds 2005 *Australian Social Attitudes: The First Report* UNSW Press Sydney
- Žižek S 2001 *On Belief* Routledge New York