

**THE JUSTICE OF JURISDICTION:
THE POLICING AND BREACHING OF BOUNDARIES
IN ORSON WELLES' *TOUCH OF EVIL* ***

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Introduction	108
Film noir and <i>Touch of Evil</i> exceptionally rich for border issues	111
<i>Touch of Evil</i>: the narrative	113
Fluidity of borders and confusion of stereotypes	115
Opposition or resemblance between Quinlan and Vargas?	120
Blurring the lines	124

Résumé

La légitimité du droit dépend de la confection de frontières et de limites qui sont souvent naturalisées au point d'apparaître invisibles. Nous tenons pour acquis, par exemple, que “la juridiction” – *i. e.* la portée légitime d'institutions juridiques particulières – est une affaire de territoire. Pourtant, de telles affirmations de compétence ne favorisent pas nécessairement les revendications de justice. Quand elle est liée au territoire, la *juridiction* semble précéder la justice, et la prétention de prérogatives juridictionnelles peut bloquer sa réalisation.

Dans cet article, nous étudions le film *Touch of Evil*, chef-d'œuvre d'Orson Welles de 1961, pour explorer les voies par lesquelles il discute et déstabilise l'imaginaire répandue d'une affinité entre justice et juridiction. Nous soutenons que le film noir est un moyen

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exceptionnellement imaginatif pour examiner le caractère juste d'une juridiction et le rôle de fixation des frontières et limites exercé par le droit. En effet, l'éthique du Film noir souligne la nature tragique et indéterminée des relations humaines, débarrassées du besoin d'une issue narrative propre et claire présente dans la plupart des genres classiques de Hollywood.

Abstract

Law's legitimacy depends upon the crafting of boundaries, often so naturalized as to seem invisible. We take for granted, for example, that “jurisdiction” – the legitimate reach of particular legal institutions – is a matter of territory. Yet such assertions of jurisdiction do not necessarily advance the claims of justice. When linked to territory, jurisdiction seems to come before justice and the assertion of jurisdictional prerogatives may stand in the way of its realization.

In this paper, we offer a reading of Orson Welles' 1961 masterpiece *Touch of Evil* in order to explore the ways it dissents and destabilizes commonplace imaginings of the nexus between justice and jurisdiction. We argue that film noir is an exceptionally good imaginative medium for examining the justness of jurisdiction and law's boundary-defining functions because the ethics of noir emphasize the tragic and indeterminate nature of human relations, unfettered by the need for the clean and clear narrative resolution found in most classic Hollywood genres.

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Law's legitimacy depends upon the crafting of boundaries, often so naturalized as to seem invisible. We take for granted, for example, that “jurisdiction” – the legitimate reach of particular legal institutions – is a matter of territory.¹ Yet such assertions of jurisdiction do not necessarily advance the claims of justice. When linked to territory, jurisdiction seems to come before justice and the assertion of jurisdictional prerogatives may stand in the way of its realization. A law passed in the United States is unenforceable in Mexico, even if it is an

¹ See Evan Tsen Lee, “The Dubious Concept of Jurisdiction,” *Hastings Law Journal* 54 (2002-03), 1613-1639. As Justice Holmes described it, “The foundation of jurisdiction is physical power.” *McDonald v Mabee*, 243 US 90, 91 (1915).

exceptionally meritorious law that would benefit both Americans and Mexicans; and if an American outlaw on the run crosses over into Mexico, American police cannot legally cross over to arrest him without authorization from the Mexican government. Borders, in other words, seem a natural place to locate national law's endpoint.

Yet territory is only one way to conceive of the scope of legal authority. Richard Ford argues that in centuries past, prior to the invention of cartography, jurisdiction attached to individuals of certain statuses, not places: merchant courts adjudicated disputes among merchants, for example; ecclesiastical courts governed the realm of the church.² And, of course, the twentieth century witnessed the development of jurisdictional understandings that were inexorably linked to the claims of justice: in the Nuremberg trials, Allied nations (rather than any particular nation) essentially willed international law into being in order to prosecute Nazi military aggression.³ Today controversies surrounding the principle of universal jurisdiction, which allows any state to prosecute individuals who are believed to have committed certain international crimes, present only the most recent incarnation of long-standing practices allowing courts, in the name of justice, to claim jurisdiction beyond their own political borders.⁴ Thus jurisdiction's relationship to justice is contingent – sometimes a barrier, sometimes an aid in the effort to right wrongs or punish evildoers.

Moreover, the formal concept of “jurisdiction” marks only one of the many boundaries that organize law, whose main ordering project depends upon a logic of differentiation, categorization, and analogy.⁵ That logic abounds in a variety of questions both prior to and imbricated with the substantive aspects of a legal case. Resolving such disputes can engender a kind of law internal to law, an ordering force that enables, directs, and constrains law's more general ordering forces. How are such boundaries constituted, and by whom? How are they imagined: as permeable or contingent; imposed externally or generated internally; reasonable or unduly straight jacketing? What kinds of cordons do boundaries impose on the social

² Richard T. Ford, “Law's Territory (A History of Jurisdiction)”, *Michigan Law Review* 97 (1999): 843-930.

³ On the Nuremberg trials, see Michael Marrus, *The Nuremberg War Crimes Trial, 1945-46: A Documentary History* (Boston: Bedford Books, 1997); Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Knopf, 1992); see also Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale UP, 2001).

⁴ On universal jurisdiction, see Stephen Macedo, *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes Under International Law* (Philadelphia: U of Pennsylvania P, 2006); Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia: U of Pennsylvania P, 2006); Kenneth C. Randall, “Universal Jurisdiction Under International Law,” *Texas Law Review* 66 (1987-88): 785-841. Indeed, in an increasingly “deterritorialized” world, Paul Berman argues, we now have multiple attachments across space and time that confound efforts to rationalize them via national borders. See Paul Berman, “The Globalization of Jurisdiction,” *University of Pennsylvania Law Review* 151 (2002): 495.

⁵ Such boundaries are established with questions such as: Is the act adjudicated as a crime or tort? Which cause of action is most apt for prosecution? Which precedents are most applicable? Which theory of punishment or recompense is most just under the circumstances?

landscapes they organize? What kinds of justice do such delimitations of legal authority generate?

Focusing specifically on jurisdiction reveals an even deeper set of problematics that are not resolvable with simple line-drawing exercises. “*Juris-dictio*,” or “speaking the law,” manifests law as performative through speech; it signifies not just a spatial demarcation of law’s reach but also a staging of authority and an according of legitimacy to pronouncements that make pretenses at being “law.”⁶ Successful assertions of jurisdiction (that is, assertions that are assented to, enforceable, and enforced) embody a recognition that certain pronouncements are grounded in a set of origins and are expressive of norms recognized by particular communities, and indeed can constitute communities through discourse and practice.⁷ As Shaun McVeigh suggests, “viewed as process, jurisdiction encompasses the tasks of the authorization of law, the production of legal meaning and the marking of what is capable of belonging to law.” From this perspective, one can begin to ask not just “does this law apply here?” but also “why this law?”⁸

Yet that question – “why this law?” – may be difficult to pose in the formal legal process precisely because it is so foundational and assumed. Popular culture, which is preoccupied with questions of authority, legitimacy, and the meaning of justice, is able to pose such questions in ways that have the potential to push and prod the commonplaces of official legality.⁹ If assertions of jurisdiction sometimes seem to precede and make possible law’s claims of justice, one can find popular works that, thinking “jurisprudentially” (as William P. MacNeil would describe it),¹⁰ trouble that temporal logic as well as the naturalizing of boundaries that are basic to the legitimacy of law. Replete with images that call into question the justice of law’s jurisdictional claims and line-drawing obsessions, these popular works – and here we focus particularly on the genre of film noir – can remind us of the contingencies

⁶ McVeigh, Shaun, ed. *The Jurisprudence of Jurisdiction* (London: Routledge-Cavendish, 2007); Goodrich, Peter, “Screening Law,” *Cardozo Studies in Law and Literature* 21 (Spring 2009): 1-21.

⁷ See generally Ford, “Law’s Territory.”

⁸ McVeigh, 4-5. Robert Cover pushes this kind of inquiry even farther, suggesting that “jurisdiction” is “a bridge in normative space connecting [our understanding of] the ‘world that is’ (including the norms that ‘govern’ and the gap between those norms and the present behavior of all actors) with the projections of alternative ‘worlds-that-might-be’ (including alternative norms that might ‘govern’ and alternative juxtapositions of imagined actions with those imagined systems of norms).” Robert Cover, “The Folktales of Justice: Tales of Jurisdiction,” in *Narrative, Violence, and the Law: The Essays of Robert Cover*, eds. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: U of Michigan P, 1992), 176.

⁹ Elsewhere we have argued that film in particular “attunes us to the ‘might-have-beens’ that have shaped our worlds and the ‘might-be’s’ against which those worlds can be judged and toward which they might be pointed. In doing so film contributes to both greater analytic clarity and political sensitivity in our treatments of law. It opens up largely unexplored areas of inquiry as we chart the movement from law on the books to law in action to law in the image.” Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey, *Law on the Screen* (Palo Alto: Stanford UP, 2005).

¹⁰ William P. MacNeil, *Lex Populi: The Jurisprudence of Popular Culture* (Palo Alto: Stanford UP, 2007).

of law's boundary defining exercises. In this sense, we argue, they provide a kind of dissenting opinion, opening up the relationship of justice and jurisdiction to scrutiny. They are resources for resisting law's claims to the governance of particular territories or to its differential protections of members and strangers. In this paper, we offer a reading of Orson Welles' 1961 masterpiece *Touch of Evil*¹¹ in order to explore the ways it dissents and destabilizes commonplace imaginings of the nexus between justice and jurisdiction.

Film noir and *Touch of Evil* exceptionally rich for border issues

Film noir is an exceptionally good imaginative medium for examining the justness of jurisdiction and law's boundary-defining functions because the ethics of noir emphasize the tragic and indeterminate nature of human relations, unfettered by the need for the clean and clear narrative resolution found in most classic Hollywood genres.¹² If, for example, the typical western relies upon white-and black-hatted caricatures of good and evil to guide its spectators along to the usual satisfying ending, film noir's protagonists interact in ways that intentionally confuse good and evil; everyone appears "touched" by evil and only in the end can we begin to trace the narrative's winding path through the shadows to a discomfiting and uncertain kind of justice. Similarly, as William Ian Miller has argued, in revenge films we know whom to root for – whom to identify with – even if the film's hero (Clint Eastwood's Dirty Harry or William Munny) is less than perfect;¹³ whereas in film noir the protagonists' ethical ambiguity makes spectatorial and jurisdictional identification at best problematic. Welles' masterpiece intensifies noir's general problematics of identification insofar as it

¹¹ *Touch of Evil*, DVD, directed by Orson Welles (1958; Universal City, CA: Universal Pictures, 2000). *Touch of Evil* is considered by critics to be the culmination and endpoint of film noir as a genre. While it was not Welles' most popular film (its reception was compromised by studio mishandling), its critical reception has cemented its place as a masterpiece of American film. See Terry Comito, ed., *Touch of Evil: Orson Welles, Director* (New Brunswick, NY: Rutgers UP, 1985); Robert Garis, *The Films of Orson Welles* (Cambridge, UK: Cambridge UP, 2004); Morris Beja, ed. *Perspectives on Orson Welles* (New York: G.K. Hall and Co., 1995); and Stephen Heath, "Film and System: Terms of Analysis," *Screen* 16, no. 1-2 (1975): 7-77, 91-113.

¹² On film noir generally, see Alain Silver and James Ursini, eds., *Film Noir Reader* (New York: Limelight Editions, 1996); Foster Hirsch, *Film Noir: The Dark Side of the Screen* (New York: Da Capo Press, 1981); James Naremore, *More than Night: Film Noir in Its Contexts* (Berkeley: U of California P, 2008). As Donald Pease summarizes the point, "[I]n film noir, the desire to resolve these contradictions through the solution of a crime, as would happen, say, in a Hollywood detective film, gives way to the recognition of the film noir hero's ineluctable complicity in the crimes and actions under investigation. The double indemnity of film noir heroes – their indebtedness to antagonistic arrangements of the social order – is disclosed through their participation in overlapping but noncomparable realms and the impossibility of their resolution." Donald Pease, "Borderline Justice/States of Emergency: Orson Welles' *Touch of Evil*," *CR: The New Centennial Review* 1:1 (2001): 80.

¹³ William Ian Miller, "Clint Eastwood and Equity: Popular Culture's Theory of Revenge," in Austin Sarat and Thomas R. Kearns, eds., *Law in the Domains of Culture* (Ann Arbor: U of Michigan P, 1998), 161-202.

simultaneously racializes and undermines the racial identification of its main characters. Placing them in conflict at the crossing point of national borders, the film ultimately dissolves seemingly clear distinctions among them even as it puts into question the capacity of borders to constrain them jurisdictionally.

Touch of Evil begins with an extended, sensuously filmed border-crossing scene that culminates off-screen in a violent explosion: a bomb planted in a car by a shadowy, anonymous figure on the Mexican side of the border explodes on the American side. The opening scene poses a legal question – which country’s police force can legitimately investigate the origins of the flaming wreck sitting in a liminal zone between two jurisdictions? – that proves both central to the film’s meditation on the meaning of justice and ultimately unanswerable in its own right. Jurisdictional conflict in the film signals a fundamental legal predicament that goes far beyond questions of territorial demarcation: how can law identify and negotiate the outer edges of the legitimate exercise of force and cunning without itself becoming a vehicle of injustice?

So while in *Touch of Evil* the ostensible hero Miguel Vargas garbs himself in a crisp suit, his wooden personality and rigid proceduralist perspective on criminal process (not to mention his lightly marked but much commented upon Mexicanness) complicate his relation to the usual satisfying Hollywood sense of justice from the very start. The arguments he has with his American nemesis and foil, Hank Quinlan, over the proper role of the police in a democracy ring hollower than is true in a classic police procedural or a western because his visual and narrative presentation has made him rather less than sympathetically human. Vargas’ initial embrace of police restraint may be more civilized than Quinlan’s heavy-handed methods, but it is also less likely to bring about substantive reparation after a crime has been committed. Indeed by the end of the film, his suit disheveled and mud-stained, Vargas represents not the paragon of an ideal form of democratic governance but rather the grimy embodiment of a tragic justice, both worldly and otherworldly.

In the noir borderlands of *Touch of Evil*, jurisdiction is a metaphor for the articulation of boundaries between justice and injustice; but “speaking the law” is figured as, and bedeviled by, speech misfires (translation difficulties, relay interruptions, false accusations, multiple namings, obfuscatory mumbling) that ultimately blur rather than properly demarcate jurisdictional boundaries. The conflicting normative commitments of the film – between a proceduralist view of justice-as-process (Vargas) and a substantive view of justice-as-moral right (Quinlan) – seem by the end to be articulable only indistinctly, if at all. As speech acts they fail, confounding the very attempt to articulate clear distinctions between procedural and

substantive justice. If the film ends with the brothel owner Tanya's enigmatic eulogy for Quinlan ("What does it matter what you say about people?"), her suspension of judgment declares an indeterminate end to a long struggle between Vargas and Quinlan over precisely who has the power both to declare law and to fix law's relation to justice.

Touch of Evil: the narrative

A sense of otherworldliness and loss pervades *Touch of Evil*, heightened by Orson Welles' extravagant improvisations of film noir's already disorienting filmic and narrative conventions. The film begins in shadow and at night. In its famously prolonged opening tracking shot, we see a bomb planted in a car's trunk by an unknown; we watch as Rudy Linnekar, an American bigwig, and his young blonde consort enter the car and weave through the hustling streets of Los Robles, a town on the Mexican side of the US-Mexican border. We see the car cross paths with another couple, walking happily arm in arm. Both arrive at the customs booth – the car and the walking couple, a classic American beauty attached to a handsome Mexican gentleman, who announce themselves as newlyweds – and as we watch them embrace on the road, the car pulls around and, off screen, explodes. From this intersection of two couples emerges two narratives, a crime story and a corruption story, sharply intercut. By the end of the film, these two stories cross in a narrative chiasmus such that the opening mystery of the bomb is rendered subordinate to the play of violence between two opposing figures of law: Hank Quinlan, a visually repulsive American cop, and Miguel Vargas, a handsome Mexican prosecutor of a dangerous drug cartel run by the ubiquitous Grandi family.

The crime narrative follows the bombing investigation, raising the issue of the justness of jurisdictional claims in its usual incarnation as a contest over the spatial circumscription of legal authority. Abandoning his new wife Suzy, Vargas hurries to the flaming car on the American side of the border where, soon thereafter, Hank Quinlan arrives. Quinlan confronts Vargas about his presence in an American investigation and Vargas demurs, ceding Quinlan's apparent authority even as he confounds Quinlan's racism with his clean-cut demeanor and self-assurance. Both embark on the investigation of the explosion, and although they cross the border with impunity to pursue the bomber, Vargas remains largely passive, sidelined in the actual investigation.

Quinlan's famous intuition, manifesting physically as a twinge in his bad leg,¹⁴ leads him to the apartment of a young man named Sanchez, the Mexican paramour of Rudy Linnekar's daughter. There Quinlan, sure of his hunch, plants incriminating dynamite in a shoebox that his credulous sidekick Sergeant Menzies is directed to find. Vargas, who knows the shoebox had been empty minutes before, confronts Quinlan, and that confrontation leads to the elaboration of the second narrative. We hear at the very end of the film, as an afterthought, that Sanchez has confessed to the bombing; but his story – and the story of a territorial jurisdictional conflict – is exhausted by the middle of the film.

Instead we are drawn into another jurisdictional contest, one at the heart of the film's ambivalent jurisprudence – the clash between what Herbert Packer classically called “crime control” and “due process” models of policing, but one that we might more generally assimilate to a tension between “law” (as the rule of law) and “substantive justice.”¹⁵ Quinlan, Vargas discovers as the film progresses, has for years been planting evidence in murder cases to secure the convictions his intuition intimated. The crisp-suited Vargas, on the other hand, both embodies and extols a more principled proceduralist approach to policing. The clash between the two – Quinlan and Vargas, crime control and due process – provides the fulcrum that shifts the positions of both in relation to law-as-due-process and directs the film towards its second narrative. Distracted by his anti-corruption zeal, Vargas has left Suzy chillingly unprotected, abandoned immediately after the initial explosion. Accosted on the street and ushered to a meeting with comical “Uncle Joe” Grandi, the American-side boss of the Grandi family, Suzy becomes a vector through which Vargas' reputation is threatened. Over the course of the film she undergoes a series of increasingly frightening ordeals at the hands of the Grandis and, ultimately, of Quinlan. Suzy, having been subject to what is essentially a mock rape, is falsely accused of both drug use and murder after being set up by the Grandi gang. In an attempt to discredit Vargas, Uncle Joe Grandi has involved Quinlan in the plot, luring him across the line from corruption in the name of justice to crime in the name of self-protection. After Grandi's gang attacks Suzy and deposits her, unconscious, in a sleazy Los Robles motel room, to protect himself Quinlan strangles Grandi, leaving him grotesquely hanging on the bedrail above Suzy as she wakes from a drugged stupor. She is thrown in jail, and when Vargas finally rejoins her, he is met by Quinlan's loyal Sergeant Menzies, who

¹⁴ Vargas: I wonder, what makes you so very sure it was dynamite?

Quinlan: My leg.

Vargas: Your what?

Menzies: His game leg. Sometimes he gets a kind of a twinge like folks do for a change of weather. Intuition, he calls it.

¹⁵ Herbert Packer, *The Limits of the Criminal Sanction* (Palo Alto: Stanford UP, 1968).

reluctantly gives over the cane that Quinlan left behind at the murder scene. To clear his wife's name, Vargas convinces Menzies to wear a wire so that he can tape record Quinlan's confession not only to the planting of evidence but also to the murder.

In the film's complex, dreamlike final scene, Vargas and Menzies find Quinlan at a quiet bordello run by Tanya, a gypsy-like presence from Quinlan's younger days. Drunk, mournful, barely coherent but consistently self-justifying, Quinlan wanders with Menzies through a weird landscape of churning oil rigs and onto a bridge spanning a filthy river as Menzies prods him to answer questions about Grandi's murder and Vargas' stolen gun. Vargas trails them with a tape recorder through the rigging and into the water under the bridge where Quinlan, stopping short as he hears his own echo, confronts and shoots Menzies and nearly assassinates Vargas before Menzies, in his dying breath, shoots Quinlan instead. Vargas runs to Suzy as Quinlan falls into the river like a crucified saint. Watching the end of this sad spectacle, Tanya utters the film's final, oneiric lines: "He was some kind of man What does it matter what you say about people?"

Fluidity of borders and confusion of stereotypes

From the first moment of the film, the concept of "jurisdiction" seems to exist only in the breach. Constantly invoked by both Quinlan and Vargas, borders and boundaries mark distinctions but without imposing any real impediment to movement.¹⁶ Their fluidity is evident both in the film's narrative and, from the first moment, its form. As spectators, we experience it aurally in the cacophony of sound that assails us serendipitously, as if we had a part in the film wandering down the street past storefronts and brothels, and visually in the vertiginous camera angles and quick cuts from one scene to another that disorient us with sudden shifts among characters and events.¹⁷ Although the narrative has a clear temporal arc – one day, from nighttime to nighttime – its logic is dreamlike: discontinuous and fragmented, garishly lit, replete with the uncanny and the grotesque.¹⁸ If a typical realist film manipulates us by offering the illusion of transparent referentiality, giving us a false sense that we have a

¹⁶ As Terry Comito suggests, "...Welles's most fundamental theme, from the opening sequence on, is the crossing of boundaries; or rather, the impossibility of sustaining an effective boundary between a world we recognize as normal and a real of violence at once uncanny and, as in a dream, disquietingly familiar." Comito, 11.

¹⁷ See Comito, 9. Welles was well known for his use of (at that time) an unusual kind of camera lens – an 18.5/wide angle lens – that allowed the manipulation of deep focus and widened and distorted figures in the foreground. See André Bazin, "Interview with Orson Welles," in Comito, 201.

¹⁸ Comito, 18.

solid handhold on a recognizable world,¹⁹ Welles thrusts us into a defamiliarizing border zone, a dislocated and dis-locating space that undoes comforting expectations and frustrates our desire for coherence and order.

Similarly, the film sets up a number of seemingly clear narrative oppositions whose boundaries dissolve over the course of the film. The early jurisdictional conflict between Mexican and American authorities metaphorizes into a set of tensions – between civilized and uncivilized, public and private, and law and justice – that belie the possibility of jurisdiction’s ordering and authorizing project. Individual identities that initially seemed starkly differentiated and incompatible blur and hybridize, and pious principles are ultimately compromised by the threat of violence. Just as, on the level of form, *Touch of Evil* disorients its viewers aurally and visually, so too on the level of narrative it unsettles our judgments about the proper relationship between what appear to be clear categorical distinctions. Vargas himself embodies, both literally and figuratively, the blurring of seemingly naturalized boundaries, and his trajectory over the course of the film maps both the imaginative constitution and inevitable dissolution of jurisdiction in its fullest sense. The film invites us to wonder in the end just who Vargas is in relation to the social (that is, racialized and gendered) and ideological lines that seem to define him at the outset.

Thus for example immediately after the car explodes, we see Vargas standing before a billboard – “Welcome, Stranger!” – that marks him as an outsider in the United States and by extension the normative world he has just entered. Though he is accorded deference as a highly-placed Mexican official, his authority is immediately compromised across the border by both his national and racial identity. When Quinlan challenges his role in the investigation, Vargas casts himself as only an abstract presence: “Captain, you won’t have any trouble with me; I’m merely what the United Nations would call an observer.” On the one hand, Vargas appears to respect the lines of territorial jurisdiction that would restrain the reach of Mexican law; and yet on the other his response unroots him from Mexico and instead locates him in the domain of cosmopolitanism.²⁰ His detachment from an obvious national identity confounds Quinlan’s racism (“You don’t talk like one, I’ll say that for you ... Mexican, I mean,” Quinlan remarks) and, at the same time, places Vargas in an indeterminate zone vis-à-vis not just

¹⁹ On filmic realism see, for example, Bill Nichols, *Representing Reality* (Bloomington: Indiana UP, 1991).

²⁰ Homi Bhabha touches briefly on the ways in which Vargas is a figure of racial “mixedness” in making the larger claim that we ought to view racial/sexual stereotypes, within colonial discourse, as a kind of fetish object and “a complex, ambivalent, contradictory mode of representation, as anxious as it is assertive ...” Homi Bhabha, “The Other Question. . .Homi K. Bhabha Reconsiders the Stereotype and Colonial Discourse,” *Screen* 24:6 (1983): 22.

national and racial difference but their accompanying ideological overlay, the distinction between civilized and uncivilized.



“Welcome Stranger!”

The signifiers of his “civilized” demeanor – his pressed white clothes, clear diction, sense of proper place and circumscribed authority, and caution in drawing conclusions – may make Vargas an exception to the general “rule” concerning what it means to be Mexican; but more than (by way of contrast) reinforcing the usual racial stereotype (which the film caricatures elsewhere, particularly in the character of Uncle Joe Grandi), Vargas’ self-presentation stands starkly opposed to the slovenly, inarticulate, disrespectful, and anti-rationalist Quinlan. Within a general racist imaginary (one that equates “civilization” with white, not brown; English, not Spanish; the rule of law, not discretionary violence; and logic and intellect, not intuition and physicality)²¹ it is Quinlan, not Vargas, who appears uncivilized. Filmed looking upwards from a low angle, he enters the screen in all his grotesque, trench-coated, cigar-sucking, cane-toting immensity, mumbling and growling like some creature from the deep, jumping to conclusions based not on evidence but on the intuitions emanating from his game leg.²² This crossing of value affects our initial assessments of Vargas and Quinlan: where

²¹ On representations of racial otherness, see Edward Said, *Orientalism* (New York: Vintage, 1979); Homi Bhabha, *Nation and Narration* (London: Routledge, 1990); and Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: U of Chicago P, 1999). See also Charles Ramirez Berg, *Latino Images in Film: Stereotypes, Subversion, and Resistance* (Austin: U of Texas P, 2002).

²² The irrationality of Quinlan’s communicative leg as an aid in detecting crime, while suspect when compared with Vargas’ confidence-inducing reliance on reason and deliberation, is in fact associated in film noir generally with acuity and insight. Compare, for example, the “little man” residing in Barton Keyes’ stomach in *Double Indemnity* (dir. Billy Wilder, Paramount, 1944), a directive presence that pops up whenever Keyes encounters a suspect insurance claim. As becomes clear by the film’s end, Quinlan is perhaps a better detective than Vargas.

Quinlan seems monstrously corrupt and tainted by corporeal excess, Vargas – initially, at least – represents an oasis of cleanliness in an otherwise dim and dirty place.²³



Quinlan's arrival at the crime scene

Drawn to him via the enticing logic of spectatorial desire, we are also drawn to Vargas' normative clarity. He is a figure of modern law at its most civilized and restrained. In a scene in which Vargas accuses Quinlan of evidence planting, with supporting documents painstakingly gathered from endless filing cabinets in the county's hall of records, we see the jurisprudential conflict between the two clearly:

Quinlan: [Vargas] seems to think it don't matter whether a killer is hanged or not so long as we obey the fine print.

Vargas: In any free country a policeman is supposed to enforce the law and the law protects the guilty as well as the innocent.

Quinlan: Our job is tough enough.

Vargas: It's supposed to be – it has to be tough. A policeman's job is only easy in a police state – that's the point, captain. Who is the boss, the cop or the law?

Here Vargas' vision of law is proceduralist. It contains a set of clear internal boundary lines that constrain law's jurisdictional reach: to be legitimate representatives of law, the police must accord suspects fair treatment and must respect individual rights, which requires attending to rules – Quinlan's bureaucratic "fine print" – that can impede the doing of

²³ This analysis is somewhat at odds with Bhabha's emphasis on the problem of mimicry, a strategy of hybridization taken up by colonial subjects that not only copied but distanced them from colonial authority and produced visible contradictions within colonial discourse itself that undermined that authority. On our reading, both Vargas *and* Quinlan are hybrid characters, defined not just by racial difference but by competing visions of the relation between law and justice. See Homi K. Bhabha, *The Location of Culture* (London: Routledge, 2004).

substantive justice. In contrast, Quinlan defines law (insofar as he embraces it at all) specifically as a vehicle for achieving substantive justice. He rejects the interposition of “fine print” into the order-producing work of policing. If we “know” (and Quinlan does intuitively and correctly know) the identity of the killer, then the practice of ignoring borders and planting evidence simply furthers the cause of social order and is legitimized by that goal. The boss, for Quinlan, is neither the cop nor the law (in a proceduralist sense), but justice done on the basis of a truth corroborated after arrest.²⁴

Why would Quinlan embrace such a seemingly corrosive vision of justice? As we come to understand, Quinlan’s methods are fueled in the first instance not by a desire for self-aggrandizement or the pleasure of exerting power, but out of anguish born from deep loss. As he recounts the story with Menzies, we hear that his wife was strangled to death by someone known to him, a “half breed,” years ago but that he was a young cop and could not collect evidence enough to capture him. “Pete, that was the last killer that ever got out of my hands,” he tells Menzies. “I’m always thinking of her ... What else is there to think about, except my dirty job ...”

This melancholic attachment to a lost love object signals more than anger and a thirst for revenge; his disillusionment also suggests that Quinlan has been scarred by the loss of the idealized vision of law that Vargas – though not a young cop, he is one with a new wife – still embraces. Hence the vehemence of his objections to Vargas and his jurisprudence: Quinlan’s attachment to his lost wife is subsumed into his crime control jurisprudence, and his fierce defense of it is symptomatic of a violent rejection of his former naive self. These half-hidden motivations signal a more general tendency toward the privatization of politics in film noir: by way of contrast with the explicit class conflicts thematized in 1930s gangster films, noir narratives that implicate the social dilemmas and conflicts of the 1940s and 1950s tend to be articulated as tensions within and among individuals.²⁵ They also inflect the jurisdictional

²⁴ Pease describes Vargas as a hybrid character inhabiting a zone of exception that, in articulating here the relation between a free state and a police state, constitutes a “state of emergency ... the legal fiction whereby the governing powers in a ‘free state’ empower themselves to use ‘police state’ measures in order to reinstall the rule of law.... In taking up this position within the state of emergency, Vargas has granted himself the legal authority to perform the very police state tactics – planting evidence, presuming guilt, invasion of privacy, interrogation without the benefit of counsel, denial of civil rights – of which he formerly accused Quinlan.” Pease, 82. In this analysis Pease’s mistake, we think, is to assume a unitary definition of “law” as only the procedure-oriented “rule of law,” and to imagine that acting outside the rule of law entails either acting under emergency powers or acting “illegally.” As he puts it, “[T]he film represents a crime (the state’s violation of its own rules) that its viewers cannot acknowledge as a crime ...” Pease, 99. But that is true only if one defines law along Vargas’ lines rather than Quinlan’s, without reference to Quinlan’s investment in capturing truly violent criminals rather than exercising power arbitrarily.

²⁵ See Hirsch, 17-19. On the politics underlying *Touch of Evil*, and particularly the 1950s debates concerning illegal immigration across the U.S.-Mexican border, see Pease.

divides in *Touch of Evil* insofar as they pull both Quinlan and Vargas farther and farther away from a due process model of policing over the course of the film.

Opposition or resemblance between Quinlan and Vargas?

Quinlan's pathos becomes monstrous once he crosses (under the twin influences of Vargas' accusations of corruption and Uncle Joe Grandi's two double bourbons)²⁶ the boundary he maintained in his own mind between crime control policing and crime; but the origins of his sense of justice help to legitimate it, complicating our initial attraction to Vargas' ethical positions:

Vargas: Captain, you are a policeman, aren't you?

Quinlan: Aren't you? You don't seem very fond of the job.

Vargas: There are plenty of soldiers who don't like war. It's a dirty job. But it's what we're supposed to be doing, isn't it?

Quinlan: I don't know about you. When a murderer's loose, I'm supposed to catch him. Well, Pete, let's get back to civilization.

For Quinlan, "civilization" signifies a place in which justice triumphs over evil – an evil one can identify in spite of obfuscating appearances and subterfuges. Indeed, in spite of Quinlan's offensive appearance, attitudes and opinions, we can see that he is a remarkably effective legal actor. Early in the film, for example, when Vargas informs Quinlan that Suzy has been accosted by the Grandis, Quinlan quickly shifts into a prosecutorial mode that shreds Vargas' story with wordplay and innuendo like a master trial attorney.²⁷ And at the moment he places Sanchez into custody, Quinlan forcefully articulates the case for crime-control policing:

²⁶ Quinlan's return to drinking after years of substituting sweets for alcohol suggests a breaching of the internal boundary he has maintained that has kept his body and his policing "clean" over the years – at least by his own standards. Once he turns back from candy bars to bourbon, he crosses the line from crime-control policing to crime.

²⁷ Quinlan: Can you describe this man?

Vargas: Well, the first one seems...

Quinlan: Oh, the first one?

Vargas: To have been young, good-looking...

Quinlan: Were there two men?

Vargas: Not exactly.

Quinlan: Not exactly. You're saying she was taken to this dive by force?

Vargas: Not by force. No.

Quinlan: Oh.

Vargas: One of the Grandis was there waiting....

Quinlan: Go on.

Vargas: What do you mean, "go on"? I've told you what happened. Aren't you going to do something?

Menzies: We don't like it when innocent people are blown to jelly in our town.

Quinlan: Yes, an old lady on Main Street last night picked up a shoe. The shoe had a foot in it. We're going to make you pay for that mess.

Who in the audience could disagree after Quinlan conjures that image? From that perspective – let's call it the Dirty Harry perspective – the rules Quinlan bends in order to capture suspects he knows to be guilty seem to be mere fine print; far from indicating police corruption, it is a sign of the depth of his commitment to substantive justice that he violates the rule of law.

Yet the noir *Touch of Evil* will not let us rest with that set of easy pieties, either. Neither procedural nor substantive justice offers the possibility of an ethically satisfying ending to its two intertwined narratives. Rather, the film challenges the very idea that such a boundary can ever be clearly articulated. In reaching back into the past to trace Quinlan's melancholic connections to his lost wife and former self, the film proposes a relation of resemblance rather than opposition between Quinlan and Vargas – a convergence narrative that it projects both backward and forward beyond the temporal frame of the film. If Quinlan abandoned a proceduralist vision of justice after violence against his wife collapsed the boundary between public and private, “cop” and “husband,” then Vargas will experience mimetically the same trajectory when Suzy is endangered and will just as swiftly abandon what Quinlan calls his “starry-eyed idealism.”

The film figures the cracking of Vargas' smooth veneer – a cracking we have anticipated because of the way the film has cut again and again to Suzy, alone and vulnerable, in the faraway Mirador Motel – as a disruption of speech and communication. Knowing full well that Grandi has kidnapped her, Quinlan abruptly interrupts Vargas' stirring – or is it ultimately rather pompous? – defense of the rule of law with the question, “Where's your wife, Vargas?” From that moment forward, we see Vargas' proceduralist façade crumble.

Quinlan: Make it a charge. Isn't that police procedure in Mexico?

Vargas: Procedure?

Quinlan: You say your wife was attacked.

Vargas: I did not say she was attacked.

Quinlan: Did she say she was molested?

Vargas: Not physically.No.

Quinlan: Was obscene language used?

Vargas: I don't think so.

Quinlan: Then how do you explain the fact that your wife allowed herself to be picked up?

Vargas: She was not picked up!

Quinlan: Then this good-looking young man was a friend of hers?

Vargas: Obviously not.

Quinlan: You wouldn't call that gettin' picked up on the streets?

Adair: Now, we mustn't forget that Mr. Vargas is not on the witness stand. Hank's a born lawyer, you know?

Quinlan: Lawyer? I'm no lawyer. All a lawyer cares about is the law.

After racing to the motel to discover that both his wife and (tellingly) his gun are missing, Vargas rushes into Grandi's bar and tears it up, screaming, "Listen, I'm no cop now, I'm a husband. What did you do with her? Where's my wife? My wife!!?"

For Vargas, it seems at first glance, law's jurisdiction has hit its limits. For him the claims of justice now take precedence over the assertion of jurisdiction or neat proceduralism. If cops must respond to threats of violence with civilized restraint, husbands need not respect any such internal boundaries. Following McVeigh, we might say that such threats, for husbands, move beyond that which is capable of belonging to law – *if* we define "law" as Vargas does, divorced from substantive justice. Vargas, it seems, must step out of his role as cop to respond effectively to Suzy's plight. Yet well prior to this moment of crisis the film has shown us the deep inadequacies of a circumscribed, proceduralist vision of law's jurisdiction. If we understand jurisdiction as a speaking of law, then the film's many failures of speech, its broken relays and missed connections, signal law's incapacity to communicate and assert its authority effectively. It is as if law's words blow away in the wind without being taken up by those it governs.

Although failures of felicitous communication between speakers and listeners abound in *Touch of Evil*²⁸ (the interfering cacophony of street sounds, language and translation barriers, distorted mumblings, characters talking over one another), once again it is Vargas who embodies and exemplifies the problem most overtly. From the moment the car explosion interrupts their kiss,²⁹ Vargas and Suzy are almost completely spatially separate and unable to speak meaningfully to each other. While Vargas pursues his investigations, Suzy roams the streets and waits alone in various hotels. Hived off from her initial place at the side of her husband/protector, she is the object of the Grandis' aggressive voyeurism: they leer at her, dupe her into being photographed, harass her with a flashlight beam, and turn her "rape" into a carnal spectacle for themselves. Vargas, though, is effectively blind to her predicament and unable to connect with her when they are apart.³⁰ His inattentiveness as a husband sets the stage for Suzy's kidnapping and her implication in Grandi's murder.

²⁸ On felicitous and infelicitous speech, see J.L. Austin, *How to Do Things With Words* (Cambridge, MA: Harvard UP, 1975).

²⁹ Stephen Heath, in his *tour de force* analysis of the formal properties of *Touch of Evil*, notes the way the kiss frames the film narratively: interrupted at the start by the explosion, it is completed as Vargas and Suzy drive away after Quinlan's death.

³⁰ Vargas in fact cannot seem to articulate himself clearly as a husband with Suzy; he often distractedly slips into his public role as a Mexican official. While driving Suzy to the Mirador, he discusses the case with her in ways that confuse public and private roles (Vargas: This could be very bad for us. Suzy: For us? Vargas: For Mexico, I mean...) until she literally pulls him over to her in an embrace.

In a symptomatic scene, we see Vargas leave Sanchez's apartment during Quinlan's initial, violent interrogation in order to find a phone to call Suzy. He wanders into a store minded by a weirdly affectless and helpless blind woman who sits while he speaks with Suzy, who is lying alone in bed at the Mirador. The conversation has an intimate tone and Vargas, unnerved that the blind woman overhears it – or perhaps, ever stiffly repressed, simply unnerved by its intimacy – awkwardly and abruptly hangs up. When he finally manages to call again, one of the Grandi boys has taken over the hotel desk in an unnerving prelude to the attack on Suzy and refuses to connect the call. The next time Suzy sees Vargas she is standing on a balcony at the seedy Hotel Ritz, nearly naked and hysterical after waking up with Uncle Joe Grandi's dead body looming over her. She screams down to Vargas but he drives through a crowd pointedly jeering at her without once looking up or hearing her.

These failures of communication suggest that Vargas has excluded Suzy from the reach of law's staging, its authority and protection. When he finally sets aside his cosmopolitan detachment and commitment to procedure, Vargas seems to come alive, smashing tables and tossing gang members around the room. Yet rather than understanding his passionate response to Suzy's imperiling as a shift from "cop" to "husband," the film proposes that we might better see it as a redefinition of "cop," a mimicking of Quinlan's attachment to substantive justice, and as a result a reimagining of law itself. The threat of losing one's wife finally reveals to Vargas law's more general animating purposes ("we don't like it when innocent people are blown to jelly..."). The film's narrative movement is unidirectional: both Vargas and Quinlan move toward the use of greater and greater violence, shifting the line of its legitimate use. This blurring of Vargas into Quinlan follows a logic of doubling rather than (as we initially supposed) opposition, and as spectators we are left straining to locate the increasingly shadowy line between law and crime. Representatives of two distinct, territorial legal orders, they are moved to ignore jurisdictional impediments by the claims of justice.

Both Vargas and Quinlan shift toward the use of violence out of concern for their reputations. After Vargas confronts Quinlan about his evidence planting outside Sanchez's apartment, Quinlan's fulmination ("I've got a position in this town, a reputation! Who's Vargas? ... Somebody's going to be ruined.") enmeshes him in a conversation with Uncle Joe Grandi that leads to their collusion. Grandi's plan is to damage Vargas, who is prosecuting his brother for drug smuggling, by destroying Suzy's reputation. To advance that plan, Quinlan informs the District Attorney that Vargas is not a drug prosecutor but a dealer and addict who has corrupted Suzy; and when Suzy is kidnapped after the staging of a "wild party" in her motel room ("It's a mess! A stinking mess!" cries the motel's deeply neurotic night man)

Vargas' only goal is to "clean" Suzy's name of the "filth" that has tainted it. This preoccupation with reputation and its fragility reiterates the film's more general concern with the problematics of communication. If speaking the law brings it into being and asserts its jurisdictional reach, then destabilizing the assumed connection between speech and meaning further undermines our capacity to know the law or to recognize its claims to justice. When we learn that Quinlan's heroic reputation is built on suspect practices that he must keep secret, we begin to understand that the doing of substantive justice requires crossing the line between law and crime; and when Vargas' high-toned attachment to due process protections renders him unable to protect Suzy, then his reputation as an attractive figure of law proves hollow.

Blurring the lines

Ultimately, the film signals the blurring of the lines between law, justice and crime through the mimetic logic of mirroring and echoing. We see this trope play out most visibly in the closing scenes, first in Tanya's brothel and finally on the bridge over the filthy river in which Vargas will wade and Quinlan will die. Tanya is a gypsy fortune-teller who has known Quinlan for years, and the brothel is a place out of time, an otherworldly throwback to Quinlan's past and the only space in which we see him at rest. She conjures what feels like a different jurisdiction, detached from the world in which Quinlan's reputation matters. She both reconnects him nostalgically with his lost past and removes him from the immediate worldliness of his dirty job. When, after reading the tarot cards, she tells him that his future is "all used up," we know that Quinlan has crossed for the last time a threshold into another domain – a place that law and law's normative commitments do not reach. Vargas still partially resists the loss of his ideals, but he too has entered a different domain. Tattered and covered in dirt as he rigs the microphone to Menzies, he rails against the very acts he must do to save Suzy ("You think I like it?" he spits; "I hate this machine. Spying, creeping in back alleys..."). In the end, though, he winds his way with Quinlan and Menzies through a twisted landscape in which identities uncannily merge and no final claims about the relation between law and justice can be made.

As Quinlan rises to leave Tanya's with Menzies, we enter a hall of mirrors; once discrete characters substitute for each other and project themselves beyond the bounds of individual identity. Quinlan, drinking in Tanya's parlor, sees Vargas in a mirror; Quinlan blinks and the image is Menzies. Vargas, trailing Quinlan and Menzies with a tape recorder, becomes an

echo of Quinlan's voice. After Quinlan shoots Menzies with Vargas' gun, he falls with Vargas standing immediately behind him, an imagistic substitute. Just as Quinlan readies to shoot Vargas, Menzies shoots Quinlan. And as Vargas leaves the river, filthy from his dirty work, Quinlan falls into it and dies arms outstretched, as if crucified on a cross.



Vargas in the dirty river, trailing Quinlan and Menzies with a tape recorder

These disorienting projections, doublings, and substitutions figure metaphorically the ultimate indeterminacy of the relations of justice and jurisdiction, due process and crime control policing, and, ultimately, between justice and injustice. It is not that we are unable to assess and condemn Quinlan's acts; in the end he has killed two and nearly three men in a gambit to save only himself. It is, rather, that as Quinlan claims, everyone that he framed – and by extension everyone in the film – is “guilty, guilty, guilty!” Guilt detaches from the commission of specific crimes and, spilling into the poisonous ether of the place, generalizes to everyone.³¹ But guilty of what? Of a naive and misguided embrace of procedural justice? Of abandoning one's wife? Of zealously pursuing substantive justice? Of caring more about one's reputation than one's principles?

“How could you arrest me here?” Vargas asks Quinlan as they stand on the garbage-strewn banks of the dirty river; “this is my country.” “And this is where you're going to die,” Quinlan replies. Quinlan has entered a space beyond any law's jurisdiction, a zone in which justice is defined only with reference to the shadowy world of memory and loss beyond this

³¹ On the problem of generalized guilt in confession settings, see Peter Brooks, *Troubling Confessions: Speaking Guilt in Law and Literature* (Chicago: U of Chicago P, 2001).

world's law. His violence is lawless in the sense that it is finally without legitimacy – it cannot claim jurisdiction in a way that would confer the authority and status of law. And yet correct in assessing Sanchez's guilt, he dies a crucified man. Perhaps, the film suggests, he can answer charges of corruption and injustice only in the world beyond. Vargas, who has triumphed over his corrupted double in this world, has saved his wife but at the cost of crossing a border over which he cannot return. He rushes away from the scene with Suzy with the desperation of a haunted man.

* * *

“What does it matter what you say about people?” Tanya asks rhetorically at the end of Welles' film. There on the bridge spanning the filthy river that lies between the United States and Mexico we are left in a world in which the ordering categories have failed, where law necessarily must partake of the evil it seeks to eliminate. Both Vargas and Quinlan re-imagine and resituate the internal boundaries that constitute law as separate from crime in order to confer legitimacy on the violence they exercise. As such, *Touch of Evil* illustrates the ways in which jurisdictional prerogatives are subject to the claims of justice even as those claims are themselves troubled. Jurisdiction neither can be said to precede justice nor stand in its path. Boundaries are crossed and re-crossed even as the law that constructs and polices them seems to lose its way.

In refusing and reversing the most conventional understandings of law's proper jurisdiction, *Touch of Evil* reminds us of the contingent and contextual relationship between law's jurisdictional claims and its aspirations, both in our world and the world of the film, to do either procedural or substantive justice. In film noir, all are guilty; all are implicated in law's compromised workings and reworkings. In that sense law, in its indeterminacy and imperfection, is both recognized by and constitutes a particular kind of community – a community of strangers whose mistranslations necessarily impede the clear articulation of norms and boundaries. As we enter an emerging world in which borders are crossed illegally with relative impunity, in which explosions set off by terrorists provoke the collapsing of jurisdictional constraints over the exercise of violence in law and war, and in which communication failures across cultural lines produce catastrophic misunderstandings, perhaps we are indeed entering the shadowy world of film noir and would do well to heed the insights we find in its dissenting opinion.