Chapter 9
Apology's Research meets Law and Cinema

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1. Introduction

This paper deals with apologies through an interdisciplinary perspective based on Law and Cinema. I've divided the work into 4 parts. In the first one, I've drawn some introductory remarks. In the second part, I've focused on the relationship between Comparative Law and Law and Cinema. The third part is dedicated to some significant apology cases depicted in famous movies. In the final part I've drawn some conclusions.

Firstly, I would like to stress how comparative law is strictly connected with interdisciplinary studies. Some scholars have actually talked about a "subversive function" of comparative law as a discourse

disrupting the theoretical and positivistic order of law.[1] Comparative law scholars also refer to different areas of knowledge in order to reach a cross-cultural dimension of law as well as to relativize local law.[2]

With particular reference to law and economics it's important to stress how behaviours and economic incentives can be related to legal norms.[3] In such a critical way, theories like "rational choice" remind us that "the everyday world is a place in which the tug of wrongdoing is ever-present, with individuals purposedly choosing to break the law to further their own interests".[4] Following this behavioural perspective, literature and movies represent another important point of view to illuminate significant features of legal reasoning.[5] More explicitly, some Law Scholars have underlined

1 This chapter is a revised version of Nicola Brutti 'Apologies Through Law and Cinema', [2019] 25 C.E.L.B. , 1-27. See Horatia Muir Watt, 'La fonction subversive du droit comparé' (2000) 52(3) Revue interntationale de droit comparé 503, 505; George P Fletcher, 'Comparative Law as a Subversive Discipline' (1998) 46 AJIL 695; Alessandro Somma, *Introduzione al diritto comparato* (2nd edn, Giappichelli 2019), 3.

2 Ibid.

3 Incentives are represented by all those norms providing benefits or sanctions aimed at inducing someone to behave in a certain way. See Guido Calabresi, *The Future of Law and Economics: Essays in Reform and Recollection* (Cambridge University Press 2016) 76.

4 See Nicole Hahn Rafter and Michelle Brown, *Criminology Goes to the Movies: Crime Theory and Popular Culture* (New York 2011) 20.

5 See also Joseph W Dellapenna 'Peasants, Tanners, and Psychiatrists: Using Films to Teach

the limits of adversarial and rational models typical of the western legal tradition[6] and their lack of flexibility in coping with certain issues like non-rational behaviours, emotions and cognitive biases. In this sense, it was argued that legal issues can be critically analyzed through film studies in order to emphasize emotional and empathetic patterns of interpretation.

2. Comparative Law meets Law and Cinema

In a recent study, Prof. Geoffrey Samuel considered the importance of comparing legal reasoning with reasoning and analysis pertaining to other disciplines.[7] Such a comparison implies a lot of possible directions of analysis. Different forms of reasoning are probably as many as the disciplines we choose to compare. Literature and movies might represent as many points of view to illuminate a legal analysis of the real world through a useful casuistic approach. One of the most challenging perspectives of analysis is represented by Law and Cinema studies.

Generally, the difference between Law and Arts (and Cinema) matters in terms of functions and structures of languages and communication.[8] Everybody knows how the position of Law is uncertain to the distinction between hard science and social science. But Law - as well as Humanities - is probably more similar to the social sciences than to hard science as it implies, at least in part, discretion in order to deal with certain social needs.

We can initially sketch the differences between legal discourse and discourse on film. According to Geoffrey Samuel,[9] we can find a common frame of reasoning for both law and cinema discourses. Let's look at the tripartite scheme by the Jurist Gaius: persona (person), actio (action), res (props) and their keys for interpretation.[10] Both legal reasoning and film studies own these three elements and show a similar attitude to be interpreted through them.

Comparative Law' (2008) 36(1) IJLI 156, 157.

6 Ibid. See also Jennifer K Robbennolt, 'Apology and Civil Justice' in Brian H Bornstein and others (eds), *Civil Juries and Civil Justice: Psychological and Legal Perspectives* (Springer 2008), 217.

7 Geoffrey Samuel, 'The Paradigm Case: Is Reasoning and Writing in Film Studies Comparable To (or With) Reasoning and Writing in Law?' (2016) 13 NoFo 17.

8 Ibid.

9 Ibid 19.

10 Ibid.

But, unlike cinema discourse, legal reasoning is marked by a dichotomic way of thinking. From a legal perspective, the world of fact must always be reduced to categories and concepts that often function in terms of a dichotomy, for example the *summa divisio* between lawful acts and unlawful acts, real property rights and obligation rights etc.. This model is normally rooted in western legal tradition and particularly in civil law countries. According to the pandectist metaphor, legal knowledge can be considered as similar to a pyramid of concepts in which all parts are logically interconnected.[11] We find the same binary pattern at different levels of abstraction. At a general level, we can take Hans Kelsen's famous metaphor about the King Midas' touch. The Austrian jurist explained the relationship between natural world and legal world very sharply as follows: "Just as everything King Midas touched turned into gold, everything to which law refers becomes law … " (Kelsen 1967, p. 161).[12] We may also think about the Roman Law principle: "Quod non est in actis non est in mundo"[13] ("What is not kept in records does not exist").

At a more specific level, the dichotomic reasoning might follow stricter distinctions. For example is this a 'property' or an 'obligations' issue? Is this a 'public' or a 'private' law matter?[14] Given this pattern, either something is X or it is Y. There is usually no room for atipycal features. In addition, legal discourse is subject to what might be called the authority paradigm.[15] Samuel points out that: "The texts - legislation and judgements - can be criticised but they cannot be dismissed or ignored as invalid. They have an authority that might be described as a secular divinity. Moreover the authority paradigm imposes limits on the kind of arguments that can be used in presenting a case and in justifying a legal decision. Thus it is not normally acceptable in legal reasoning to state that a particular decision in the House of Lords was caused by the Law lords dislike of the judge or judges who decided the case at a lower appeal level. In other words it is not normally acceptable for lawyers and jurists, when reasoning within the authority paradigm, to have recourse to psychological or ideological theories

11 Notably, this approach is similar in some respects to the Law of Reason. See Mathias Reimann, 'Nineteenth Century German Legal Science' (1990) 31(4) BCLRev 837, 860.

12 Hans Kelsen, *Pure Theory of Law* (Max Knight tr, University of California Press 1967), 161.

13 See Umberto Albanese, *Massime, enunciazioni e formule giuridiche latine* (Hoepli Editore 1993) 315.

14 Samuel, 'The Paradigm Case' (n 7) 27.

15 See ibid 18.

(although this restriction would not apply to a jurist writing from outside this authority paradigm)".[16]

However, as I will try to point out in this chapter, that's not entirely true. Sometimes strict law can't manage all the unknown and variable factors and so it must have a certain degree of flexibility. In other words one cannot ignore that Law in itself is conceived to fill such a gap as well. According to Posner, Literature shows once again how an open minded and flexible legal thinking can lay on conceptual opposites: Formalism v. Realism; Law v. Equity, Mercy and Justice; Rigid v. Flexible; Positive Law v. Natural Law; Letter v. Spirit; Statute Law v. Common Law; Judge finds law v. Judge made law.[17] So there are several catch-all provisions or flexible features in legal discourse which allow discretional interpretive choices.

Additionally or alternatively to classic authority paradigm, we may think about a more complex method of analysis.[18] Samuels calls such a broader methodological framework for interpretation "resonance". Going beyond the strict hierarchical patterns of analysis we can look at an empathetic way of dealing with legal problems that tries to encompass human experiences taken from the real, ordinary world. Given a casuistic oriented paradigm of interpretation why not teach legal topics as contract, tort etc. through empirical focal points, like debts or personal injury, that statistically are the more relevant?[19] One might go further and group the cases and statutes around concrete topics which find a correspondance in movies'

16 Ibid.

17 Richard A Posner, *Law and Literature* (Cambridge 2009) 162.

18 See Samuel, 'The Paradigm Case' (n 7) 36-37: "As has been seen, the goal of the legal theorist is to find an intelligible order in the cases and statutes that are the objects of the interpretation. Indeed Dworkin has argued that the role of the judge is to participate in a grand project that is analogous to writing a chain novel and thus the judge as interpreter is indeed working towards the idea that each instance is part of a greater general theory. In short coherence has been a major objective in legal reasoning, especially since the 16th century (Samuel 2012, 448). Tony Weir, in an article comparing contract in English and Roman law, once attacked theorists in asserting that he had no theory to propound. Legal technique was, in his view, casuistic and thus Roman jurists were practical lawyers who 'hypothetically varied the actual facts of the situations presented to them, and considered what the legal effect of such hypothetical variations would be' (Weir 1992, 1617)".

19 Ibid.

subgenres.[20] As a result the interpreter could fill the gap using the special lents of movies in order to deal with the complexity of certain issues.[21]

Film studies show how individual relationships and human passions could temper the rigidity of hierarchical structures and authoritative paradigms. Judges, and even more juries, have to cope with real world experiences and they should adopt some flexibility in the application of abstract principles and categories. Cinema studies often teach us that sometimes legal reasoning also needs compassionate and empathetic feelings.[22] As underlined by Samuel, some films suggest that "the tension between the individual and the political whole is part of a human structural relationship in which the 'fallibility' of the individual relationship is always going to be the weak point in the best devised political and holistic Leviathan monoliths. Such monoliths are not designed for such individualist 'deviations' just as economic models of society are not designed to cater for the *homo aeconomicus* who is not a self-interested and rationally greedy individual".[23] Structuralism and functionalism (holism) are up against actionalism and agency (individualism).[24]

The issue is also debated by the proponents of postmodern epistemology.[25] For example Philips use the extreme case of the film "*Miracle on 34th*

20 Samuel, 'The Paradigm Case' (n 7) 38.

21 See Kathy Laster, Krista Breckweg and John King, *The Drama of the Courtroom* (The Federation Press 2000), vii: "Movies seemed to offer great promise. For students of law and legal studies, courtroom films in particular appeared to be an ideal way of demonstrating the vagaries and complexities of law in action." See also Joseph W Dellapenna, 'Peasants, Tanners, and Psychiatrists: Using Films to Teach Comparative Law' (2008) 36(1) IJLI 156.

22 See Susan A Bandes and Jeremy A Blumenthal, 'Emotion and the Law' (2012) 8 Annu Rev Law Soc Sci 161; Martha Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Beacon Press 1996), xvii, 137. About this book, see Thomas Morawetz, 'Empathy and Judgment' (1996) 8(2) YaleJL&Human 517, 519 p. 3 There is no page 3 in this journal/volume, and the whole article discusses this text, more or less, so I have chosen a pinpoint which I think might work instead of 'page 3', being the page on which the author's following quote features, noting that "She seeks to show that judicial decisions informed by "the literary imagination" are likely to be sounder and wiser than judgments reached by other means. Secondarily, she argues that legal education and the perspectives of lawyers should similarly be tempered by literary study". Nic please check and confirm the pinpoint reference.

23 Geoffrey Samuel, 'Cinema and Law- Ten films for the Comparatist?' (British Association of Comparative Law, 22 May 2017) <https://british-association-comparative-law.org/2017/05/22/geoffrey-samuel-cinema-and-law-ten-films-for-the-comparatist/> (accessed 4 May 2020).

24 Ibid.

25 See, among others, Pierre Schlag, 'Postmodernism and Law: A Symposium' (1991) 62 U Co-

Street"[26] to show how postmodern epistemology and the power of human relationships can ultimately lead to a change of interpretive paradigm.[27]

Additionally the discovery of truth doesn't depend entirely on a legal adversary paradigm in itself, but on an altruistic and somehow idealistic effort. This role is often played by the hero of the film, sometimes a willing Lawyer, who fight against the system. In piercing the veil he is similar to a Don Quixote tilting at windmills. Look at Matt Damon and his squire Danny De Vito in *The Rainmaker* directed by Francis Ford Coppola, 1997. His motto is: "There's nothing more thrilling than nailing an insurance company".

According to this pattern, the popular culture of movies expresses a plaintiff empathetic point of view where the viewer is treated like a metaphoric juror. For example, we may see that a first pattern is represented by the storytelling about an individual, the small and vulnerable, who fights againts the powerful, that could be either police, public authority or the large and greedy company.[28]

I'm not saying anything new here about storytelling's main technique. Basically it is the same struggle of Oedipus against the Sphinx narrat-

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lumbia L Rev 439; Richard A Epstein, 'Legal Education and the Politics of Exclusion' (1993) 45 Stan L Rev 1607; Dennis Paterson, 'Postmodernism, Feminism, Law' (1992) 77 Cornell L Rev 254.

26 This is the story of a man, "Kris Kringle", who was convinced that he was Santa Claus, meanwhile trying to convince his neighbours to believe in Christmas. The film seems "designed to advance the controversial proposition that Santa is real and children should be allowed to let their imaginations run free" (Noel Murray, 'Miracle on the 34th Street' (*AV Club,* 13 December 2006) <https://film.avclub.com/miracle-on-34th-street-1798202201> (accessed 4 May 2020). "What makes *Miracle on 34th Street* so delightful is the way it constantly turns the question of belief vs. evidence […] into a question about our most essential and human values. Best of all, it does this with a jaundiced eye that admits the full spectrum of human folly. The judge assigned to the case wants do the right thing by both reason and the law, even if that means committing Kringle. But his cigar-chomping political advisor lets him know, in no uncertain terms, that jailing Santa Claus will end the judge's political career". See also Adam Frank, '"Miracle On 34th Street": An Old Holiday Movie For Modern Times' (*NPR,* 29 November 2016) <https://www.npr.org/sections/13.7/2016/11/29/503700215/miracle-on-34th-street-an-old-holiday-movie-for-modern-times?t=1568451693127> (accessed 4 May 2020).

27 Robin Phillips, 'Miracle on the 34th Street and the problem of Postmodern epistemology' (Robin's Readings and Reflections, 23 December 2009) <http://robinphillips.blogspot.com/2009/12/miracle-on-34th-street-and-problem-of.html> (accessed 4 May 2020).

28 Larry E Ribstein, 'Wall Street and Vine: Hollywood's View of Business' (2012) 33(4) Manag Decis Econ 211, 212-213.

ed in the play *Oedipus Rex* by Sophocles.[29] There are many examples of such archetypes: A) *To Kill a Mockingbird* is a film of 1962, inspired by the homonimous book by Harper Lee. The story talks about a black man, Tom Robinson, unjustly accused of sexual assault in the Alabama of 1932. Only the lawyer Atticus Finch, played by Gregory Peck, believes that Robinson is innocent; B) The classic *12 Angry Men*, by Sydney Lumet (a film of 1957); C) *The Rainmaker*, a class action movie by Francis Ford Coppola; D) the popular Film *The Merchant of Venice* (with Al Pacino, 1994), inspired by the homonymous Shakespearian Drama, with its famous Portia's closing argument.

I think it is worth pointing out that strict legal paradigms have been considered as antagonists by socially committed cinema. As observed by Peter Häberle, the European and American legal movies of the 50's started dealing with sensitive subjects like human rights, discrimination, personal dignity[30]. In his opinion, such movies helped significantly the development of civic consciousness and political engagement.

Empathy can be the fuel of a legal drama as well as an added value in deciding on a court case. Hollywood does this with some emotional and entertaining force. The audience is often led to ask itself the rhetorical question: imagine how much more peaceful and fair society would be if the legal system would pay a closer attention to this matter. This is something that the comparative law textbook might not be so good at achieving.[31] That is why Law and Cinema can be so important for Comparative Law studies.

3. Apologies between Law and Cinema

Apologies as a legal issue are a sensitive topic that lies between evidence and remedies, substantive law and procedural law, rational and irrational behaviors. But, maybe for the same reasons, apologies can also become a strong and insightful narrative tool in legal movies.

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29 "What's important is that Oedipus was admitted to Jocaste's side because he had triumphed at a trial of truth" (Jaques Lacan, *The Seminar of Jacques Lacan: Book 17. The Other Side of Psychoanalysis* (Rusell Grigg tr, Norton 2007), 117. As well known Freud and Lacan refer to the Oedipus myth and to Sophocles' homonymous tragedy.

30 Peter Häberle, 'Poesie und Verfassung- unter Einbeziehung von Drehbüchern aus Filmen', (2018), 1, Riv. Dir. Comp., 72.

31 Geoffrey Samuel (see above n. 23)

Since apologies normally lack any regulation or legal classification, jurists are mostly unaware of their potential in dealing with litigation issues. In general, this fact is due to the suspicion with which adversary culture looks at apologies, even though the latter could brilliantly serve different purposes as forms of reconciliation or redress.

"Never apologize, mister, it's a sign of weakness" says John Wayne playing the role of Captain Nathan Brittles in 1949 western *She wore a Yellow Ribbon*, directed by John Ford.[32] The Cowboy sterotype can be considered as "symbolic of the illimitable plains and also associated with reckless, exploitative, romantic, and violent behavior, which is charateristic of open societies".[33] On the contrary, the importance of apologies has been acknowledged over time as a sign of responsibility as well as ownership of the problem which can lead to peaceful solution and remediation.[34]

Sometimes legislation considers apologies only to protect those who apologise from the risk of self-incrimination. Some statutes, for example, make clear which requisites are needed to consider an apology statement as an admission of wrongdoing or, otherwise, what it needs to keep them outside the realm of 'general admissions of fault' by law.[35] Unike common law countries which tend to protect apologetic statements, although with different intensity, most of the civil law countries do not have any legistation protecting apologies[36]. The assessment is left to the judges interpretation about the specific evidence of confession.

On the other side, apologies could be considered as remedies even if it might change significantly the rational paradigm of law. I mean essentially that the right to keep silence (art. 21 of the Italian Constitution, § 5 of the German Grundgesetz, U.S. Constitution's Fifth Amendment), purported

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32 See John Baldoni, 'What John Wayne Got Wrong About Apologizing' (*Forbes,* 3 April 2019) <https://www.forbes.com/sites/johnbaldoni/2019/04/03/what-john-wayne-got-wrong-about-apologizing/#43067ad455d2> (accessed 4 May 2020).

33 See Kenneth E Boulding, 'The Economics of the Coming Spaceship Earth' in Henry Jarrett (ed), *Environmental Quality in a Growing Economy* (Resources for the Future 1966) 3, 7. See also Eric Hobsbawm, 'The myth of the cowboy' (*The Guardian*, 20 March 2013) < https://www.theguardian.com/books/2013/mar/20/myth-of-the-cowboy> (accessed 4 May 2020).

34 Baldoni (n 31).

35 For a comprehensive analysis, see Robyn Carroll and Prue Vines, 'The Apology Ordinance: Bold Steps into Some Uncharted Areas of Apology Protecting Legislation' (2018) 48 Hong Kong LJ 925.

36 See the Chapter by Wannes Vandenbussche, 'Introducing Apology Legislation in civil law systems: A new way to encourage out-of-court dispute resolution'.

by the Rule of Law and by the Due Process clause is clearly incompatible with compelled self-incrimination through an apology. However, there might be an exception: the situation could change slightly in the case of a smoking gun, or if there is a hard evidence against the potential apologizer.

In a previous comparative law study[37] I argued that such a remedial function of apologies has been mostly framed over time by cultural paths (path dependency). For example, it is traditionally viable for an apology to regarded as remedial in most far eastern countries according to a religious and collectivist view of the human relationships.[38] Meanwhile in other countries (i.e. Australia, South Africa) one should consider the previous and very peculiar influence of political reconciliation processes on legal cultures and legal systems etc. This is mainly a charateristic of historical, post-colonial experiences.[39]

Probably a flexible framework for apologies is better than a strict legal classification or regulation due to its ability to reflect genuine feelings and non-mandatory duties. In fact, the nature of such duties (social, legal, ethical, even religious) is still debated and it's also a classical cross-cultural issue.[40] As a consequence, non-compliance is probably to be treated with behavioral responses, like social pressure, rather than with coercion or punishment.[41]

Speaking about torts and moral damages, we know how much pathos can be linked to "pain and sufferings" cases in Tort Law. In fact a moral prejudice implies mirroring in the victim's experiences and most important thing it cannot be easily compensated.

For example, we may see how apologies are important for both narrative aim and legal reasoning in the Film "*A Civil Action*".[42] The real case that

37 Nicola Brutti, 'Law & Apologies: Profilo comparatistico delle scuse riparatorie' (Giappichelli, 2017).

38 See the seminal work by Hiroshi Wagatsuma and Arthur Rosett, 'The Implications of Apology: Law and Culture in Japan' (1986) 20 Law & Soc'y Rev 461.

39 For a comparative-historical perspective, Jan Hallebeek and Andrea Zwart-Hink, 'Claiming Apologies: A revival of *amende honorable*?' (2017) 5(2) CLH 194.

40 "Apology is selected as our focus of investigation, since it is one of the most well studied speech acts in the areas of cross-cultural pragmatics, assessment and teachings". See Yuriko Kite and Donna Tatsuki, 'Remedial Interactions in Film' in Donna Tastsuki (ed), *Pragmatics in Language Learning, Theory and Practice* (JALT Pragmatics SIG 2005), 102.

41 See in general Peter John and Jane Robb, 'Using behavioural insights for citizen compliance and cooperation' [2017] Ev Base 1.

42 See Justyna Herman, 'A civil action: Is there room for apology in the adversary system?' (*Pic-*

inspired the film (and the book on which the film is based) is *Anderson v. Cryovac, Inc.*[43]

The film talks about some people severely injured by water pollution and therefore entitled to (and then awarded with) compensation as members of a class-action lawsuit. A lawyer tries to explain them the advantages of accepting a settlement. But the mother of a young victim answer that she is not interested in money, she just wants the apologies of the tortfeasor. And this is going on while the victim's families are joining a support group. Damages appear clearly as a collective issue, since the whole life of a community was severely affected just for the economic interests of the defendant corporation. When the mother says "I want only apologies, not money", she is expressing in a somehow naïve but very simpathetic way: my aim is that they regret what they did, and I guess my only wish would be that nothing so terrible would ever happen to anyone else ever again.

On the contrary, the lawyer thinks immediately about evidence and what an apology will mean for their defence. Absent a "smoking gun", or an irrefutable proof, asking for an apology is like asking for the moon! For his part the lawyer is more worried to look for evidence rather than for apologies. Since apologies can amount to a statement of fault, asking to the defendant to admit wrongdoing is, absent a smoking gun, probably an unrealistic and unreasonable goal. A particular description of litigation mechanism (the dilemma between settle or not to settle the dispute) contributes also to shed a critical light on the sensitive issue of professional ethics of lawyers.[44] Again, the audience is often led to ask itself rhetorical question: imagine how much more peaceful and fair the society would be if legal system would pay a closer attention to this matter.

We may think also about cases of people taken into custody by the police who then die under suspicious circumstances. For example, let's look at the Italian Cucchi case,[45] a boy who died in prison after being arrested for drug dealing.

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turing Justice, 20 January 2005) < https://cap-press.com/sites/pj/acivilaction_herman.htm> (accessed 4 May 2020).

43 *Anderson v. Cryovac, Inc*, 805 F. 2d 1 (1st CIR 1986).

44 Ribstein (n 28).

45 Lorenzo Tondo, 'Trial gripping Italy hears police beat detainee who later died' (*The Guardian*, 10 April 2019) <https://www.theguardian.com/world/2019/apr/10/stefano-cucchi-italian-police-trial-francesco-tedesco> (accessed 4 May 2020).

What horrified and stunned the public most was the conspiracy of silence (in Italian expressed by the untranslatable word "omertà") that followed.

The Stefano Cucchi story inspired a very moving italian film called *Sulla mia pelle* (2019, *On my skin*) that won the David di Donatello award in 2019. In telling the story of Stefano Cucchi's victimhood, the movie definitively contributed to stir up strong reactions of disappointment in the public sphere.[46]

After a large debate, the case itself had a major breakthrough. One of the offenders - also a key witness - apologised to Ilaria Cucchi (Stefano's sister) and also the High Command of the Italian Carabinieri started to change his opinion on the events. Although it took quite so long to dig it out of the muck, the whole truth came out and prevailed due to the fight carried on by the family and due to the film's success.I've found similarities with the case cited by Robyn Carroll about discrimination and vilification against an aboriginal man.[47] In that case, the New South Wales Administrative Decisions Tribunal found the complaints substantiated and, in addition to ordering the payment of damages, ordered the Commissioner of the New South Wales Police Service and each of the police officers named

46 Ibid.

47 Robyn Carroll, 'Apologies as a legal remedy' (2013) 35 Sydney L Rev 317, 329 -330: "In Russell v Commissioner of Police, Mr Russell, an Aboriginal man, was found to have been the subject of unlawful racial discrimination and vilification while being taken into custody. The enquiry by the Equal Opportunity Tribunal related to a complaint under the Anti-Discrimination Act 1977 (NSW) lodged by Helen and Ted Russell on behalf of their son, Edward John Russell. The complaint was lodged with the Anti-Discrimination Board on 6 February 1998. At that date Edward John Russell was alive but was in prison. He subsequently died, in late 1999, in circumstances that were not the subject of the Tribunal's enquiry. The New South Wales Administrative Decisions Tribunal found the complaints substantiated and, in addition to ordering the payment of damages, ordered the Commissioner of the New South Wales Police Service and each of the police officers named in the orders, individually, to write a letter of apology to the parents of the late Mr Russell in the following terms: On the 11 December 1993, eleven police officers stationed at the Bathurst Police Station apprehended and arrested Edward John Russell, an aboriginal person, on the Wiseman's Creek Road at Oberon. The Equal Opportunity Division of the Administrative Decisions Tribunal has found that the conduct of the police officers, and the language used by them, towards Mr Russell during his arrest, were in breach of the racial discrimination and the racial vilification provisions of the Anti Discrimination Act. The Tribunal also found that the NSW Police Service was liable under the Act for the conduct of the officers on that occasion. On behalf of the NSW Police Service I wish to apologise to you for the conduct of the police officers on that occasion".

in the orders, individually, to write a letter of apology to the parents of the late Mr Russell.[48]

A further aspect I would like to focus on is the interpersonal-psychological function of apologies as a tool to mediate a dispute,[49] since the legal system used to be not so sensitive to such a goal especially in civil law countries.[50]

Apologies asked by the victims of a large scale pollution case, like the one in *A Civil Action*, can be interpreted not so much as a means to achieve evidence or truth, which are in any case achievable elsewhere, but rather as a form of moral redress, a symbolic gesture, or as an important step towards a possible reconciliation.[51]

We can take into account the dialogue between a tortfeasor and a victim, and the resulting apology ritual, as a means aimed at bridging a moral gap between them. We may see how legal systems incorporate this technique in order to reduce the distances between the parties. If the attempt would be successful, that will probably allow a mitigation of both damages and sanctions.

Let's go over the 2011 movie *Le gamin au vélo* (The kid with a bike),[52] produced through companies in Belgium, France and Italy Cyrille is an eleven years boy abandoned by his father and about to head a bad path. The film shows very accurately and empathetically the feelings of anger, frustration and abandonement experienced by Cyrille. The kid ends up running away from his foster mother, after having stabbed her, and, after that, he commits an assault against a man and his son with the intention

48 Russell v Commissioner of Police, New South Wales Police Service [2001] NSWADT 32 (26 February 2001).

49 "…apologies will generally be a part of the negotiated corrective interaction between the parties and that legislation should accommodate the process without being overly prescriptive and that lawyers should therefore refrain from judging the apologies their clients offer or accept." See Alfred Allan, James Strickland and Maria Allan, 'Interpersonal Apologies: A Psychological Perspective of Why They Might Work in Law' (2017) 7(3) Oñati Socio-L Series 390. See also Deborah L Levi, 'The Role of Apology in Mediation' (1997) 72 NYU L Rev 1165, 1167.

50 See Wannes Vandenbussche, 'Introducing Apology Legislation in Civil Law Systems: A New Way to Encourage Out-of-Court Dispute Resolution' (*SSRN*, 23 August 2018) <https://ssrn.com/abstract=3237528> (accessed 4 May 2020).

51 Andrea Zwart-Hink, Arno Akkermans and Kiliaan Van Wees, 'Compelled Apologies as a Legal Remedy: Some Thoughts from a Civil Law Jurisdiction' (2014) 38 UWAL Rev 100.

52 The film, directed by Jean-Pierre et Luc Dardenne, received the Grand Prix at the Cannes film Festival, 2011.

to rob. However the situation will significantly change when Cyrille realizes this is no way for him to live. But his entry into such a conscious, and somehow adult, stage occurs while he acknowledges the possibility to be accepted and loved notwithstanding his past errors. In fact, his foster mother is ready to forgive him. Sometimes the one who is really sorry is afraid he is never going to be forgiven and this means a less chance of taking the first step.

Finally Cyrille apologises to his foster mother, the woman who took care of him, and also to the victims of the assault at a pre-trial settlement conference. One of the victims doesn't accept the apologies but I don't want reveal the ending, because what follows would be beyond your imagination: you must see such a moving film!

In *I am Sam*, an American drama film starring Sean Penn as a single father with an intellectual disability, the audience is brought to sympathize with Sam since he is in danger of losing his daughter's custody because of his intellectual disabilty.

At the trial Sam loses custody of his daughter since the best interest of the daughter Lucy is assessed without caring about emotional issues, but in a very formalistic and efficiency oriented way.[53] Afterwards, Lucy resides in a foster home with the foster mother Randy, but she continually escapes in the middle of the night to go to Sam's apartment, though Sam immediately returns her to Randy. However, the foster parents decide not to adopt Lucy and Randy apologize to Sam for trying to take away his kid.[54] Randy finally assures Sam that she will tell the judge that Sam is the better parent

53 From the Movie's script: "Given the fact that the father...was arrested for solicitation... couldn't control his emotions... endangering other children. No, you can't! It's her birthday! Ms. Calgrove also cites...Mr. Dawson's mental delays which raise serious questions...about his ability to properly parent. Run! I find at this time...it's not in the best interest of the child to remain in the home. And I order her detained...until a formal jurisdictional hearing. Mr. Dawson. Is there anything you'd like to add? I wanted to make it a really special surprise party. So I went, and I got plates at the Pic 'n' Save...in yellow and in pink--Like a princess. And then I went to the toy store...and I got balloons with the helium in them. -Mr. Dawson? -Yeah. It sounds like you gave her such a lovely party. Yes, I'm sure it was. Right now, I want to talk to you about your legal rights. OK. There's room at this table...if anybody wants to sit next to me. I just want to talk to you about your legal rights...so if you have not already retained legal counsel...the court will appoint someone for you...": 'I Am Sam Script – Dialogue Transcript' (*Script-o-rama.com*) < http://www.script-o-rama.com/movie_scripts/i/i-am-sam-script-transcript.html> (accessed 4 May 2020).

54 Ibid: "I have to apologize to you...because I was gonna tell that judge...that I could give Lucy the kind of love she never had. But I can't say that, because I'd be lying."

for Lucy. In turn, Sam proves his worth and humility in asking Randy if she will help him raise Lucy, because he feels she needs a mother figure.

However the path towards apologies is not necessarily straight and easy. It can be narrow and insidious. The film *Carnage* (2011), directed by Roman Polansky, is inspired by the play *God of Carnage* by the French playwright Yasmina Reza. It's considered a black-comedy drama and conveys a pessimistic and somehow nihilistic message. The original story is set in France, but the Polansky's film is adapted to a New York left-wing atmosphere.

The parents of a boy who assaulted another boy meet the victim's parents to apologize and settle the dispute. The attempt fails because apologies lack any consciousness and analysis about the real causes of the event. Instead of sincere and heartfelt apologies, the offender's parents bring out the worst traits: selfishness, inner conflicts and neurotic personality. As soon as each character takes his mask off, expressing himself genuinely, the public can see the weakness of human relationships as well as primordial and disruptive instincts. Polanski's provocative thesis casts a critical, pitiless and sad eye over the shortcomings of being "politically correct". It also becomes an occasion for showing the dark side of apologies, notably the utter meaninglessness of fake apologies and "cosmetic reconciliation". How it would have been different if they had taken that chance…

Let's look now at *Two solutions for one problem* (1975), a pedagogical short film by the Iranian director Abbas Kiarostami. The movie's plot is builded upon two possible and opposite scenarios, recalling a legal reasoning's model as based on a predictive and dichotomic structure. But the moral of this story can be also traced back to a classical Law and Economics issue: the advantages of cooperation.[55]

Two friends are at school and one borrows a book by the other and returns it damaged; two opposite scenarios will develop.

In the first version, the owner gets angry and suddenly his little revenge becomes a fight. The conclusion is an increase in costs and damages for both kids.

In the second version, the scenario develops in the opposite way. After making heartfelt apologies to his friend, the borrower will fix the book with glue. So by taking things calmly they find a solution together.

The film highlights the importance of dialogue and cooperation. Through the narrative strategy of alternative endings, the author seems to

55 See Robert Axelrod, *The Evolution of Cooperation* (Basic Books Inc 1984).

warn the public about the importance of thinking about our actions before it's too late. Admitting fault and repairing errors is the best option if there is still time to cooperate and prevent serious reactions from the other side.[56] It is worth recalling that Roman Law also used to warn people about the consequences of their actions by the principle: "Quod factum, infectum fieri non potest"[57] or simply "Factum infectum fieri nequit" ("A thing done cannot be undone").[58]

4. Final remarks

The discussion about apologies in the legal arena is very challenging because it implies the need for a change of paradigms in legal reasoning. Basically, we observed in this chapter that Law, according to a comparative view, could learn a lot by film studies to become more flexible and cross-cultural. As is well known, apologies - especially the so-called full apologies - can be deemed admissions of wrongdoing in most legal systems in the world. As a consequence, lawyers are traditionally reluctant to recommend to their clients to apologize. According to an adversary culture, we tend to follow a classical "reasonable man" pattern: there is little room for mercy and forgiveness in a trial.

Although apparently rational, that solution could fail to meet the real needs of the parties involved in a dispute. Far-eastern cultures can teach western legal tradition about the importance of apologies as a mediation tool.

Even if some western scholars acknowledge that apologies could be important and should be encouraged,[59] they often advocate a modified apology, such that it avoids an admission of wrongdoing.[60]

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56 "Working within such a framework, Kiarostami could reflect on the advantages of cooperation over conflict (in 'Two Solutions for a Problem')". See Jonathan Rosenbaum, 'Before He Was Famous (Kiarostami's Early Shorts)' (*Jonathanrosenbaum.net,* 17 April 2018) <https://www.jonathanrosenbaum.net/2018/04/before-he-was-famous-kiarostamis-early-shorts/> (accessed 4 May 2020).

57 See Albanese (n 13).

58 See Alexander Mansfield Burrill, *A New Law Dictionary and Glossary* (The Lawbook Exchange Ltd 1998), 466 quoting: 1 Kames' Equity, 96, 259 (Lord Kames, *Principles of Equity* (3rd edn, The Lawbook Exchange Ltd 2011).

59 Herman (n 40); Marshall H Tanick and Teresa J Ayling, 'Alternative Dispute Resolution by Apology: Settlement by saying I'm Sorry' (1996) 65(6) The Hennepin Lawyer 22.

60 Ibid.

On the other hand, apologies could be the result of a settlement negotiation on an impartial basis (pre-trial settlement, mediation etc.). Even though in certain jurisdictions apologies can also be the subject of a judicial order, this is precluded in Italy, if not in the form of a simple correction. But such possibilities should be explored carefully by taking into account the specificities of the case and by introducing adequate incentives to cooperation.

As we've seen, apologies can play an important role in rebuilding broken relationships and repairing damage. As well some movies improve the ability of parties, judges, jurors and lawyers to understand and feel empathy in most cases involving issues like moral damages, psychological harm, child's custody and the child's best interest.

Such a psychological and interdisciplinary view can help the viewer to see more tailored solutions to complex needs. We may think differently/more about those asking for apologies or for a new opportunity. Sometimes such needs can't be assessed in a strict legal way, without a compassionate and empathetic view. Given the limits of traditional and rational approaches, a more nuanced and casuistic method is recommended to understand the peculiarities of the relationships and remedies at stake. Only thus will it be possible to attach a more realistic value to apologies in the legal arena.