

LAW AND CINEMA

Iusphilosophical analysis of defendant's due process rights and prisoners in Cinema

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1. INTRODUCTION

The theory of cinema is expressed to be the seventh art. Ricciotto Canudo already said in his manifesto of the Seventh Arts that the “ultimate origin of cinema lies in the human search for the deepest pleasure, which consists merely in the most profound oblivion of oneself”¹.

Even though Law and cinema may initially sound bizarre to even compare them considering how remarkably different they are, cinema and Law have a long history together, one that does not seem to be ending anytime soon. Basically, because Law is nothing more than social life observed from a different perspective. This is the reason why the *Law and Cinema* movement has been on the rise in recent years, thus becoming a tool through which citizens mostly acquire their legal knowledge. Precisely, this will be one of the objects of the work, which influence has the *Legal Cinema Movement* on the spectator and which influence it has on the relation of this one with the Law².

On the other hand, it is worth mentioning that the so-called legal cinema does not only include the well-known “courtroom dramas” –or trial cinema–. Considering this, it would be accurate to state that this creates a microcosmic view of what Law really is. Legal cinema can include films that deal with procedural aspects, such as the importance of the role of the jury in a judicial process, to the representation of criminal or constitutional issues such as the death penalty or fundamental rights. And precisely, the main axis of this work will be that, to analyse how certain aspects of Law are portrayed in Cinema, more particularly, the criminal procedural guarantees of the defendant and the reinsertion of the prisoner³.

The paper will be divided into three main parts: the first will deal more generally with the Law and Cinema movement; the second will focus more on how certain aspects of the Philosophy of Law are reflected cinematographically; and finally, the third will deal with how different criminal issues are portrayed in cinema.

¹ WELSH, James. M., *Documents of Film Theory: Ricciotto Canudo's "Manifesto of the Seven Arts."* Literature/Film Quarterly, pp 252–254.

² *Law and Cinema* movement emerged in the context of the so-called *Cultural Legal Studies*. Authors such as John Denvir (*Legal Reelism. Movies and Legal Texts*, University of Illinois Press, Urbana, 1996) or Norman Rosenberg (Hollywood on Trials; Courts and Films. 1930-1960, in *Law and History Review*, N°. 12, 1994, pp. 341-367) are good examples. In the Spanish-speaking world, studies of this type have been developed for some time, in the academic framework of what Benja, in Rivaya and Pablo de Cima have called the *sociology of law in film* and the *pedagogy of law*.

³ Frank Darabont has made several films portraying the daily life of prisoners. A clear example would be *The Green Mile*, or *ShawShank Redemption*, which will be analysed later in this paper.

The first part, which includes both the first and the second point, deals with the *Law and Cinema Movement*, as mentioned above. In the first point entitled "*Cinema and Law*", the relationship between cinema and Law (in a general way), and more specifically with the Philosophy of Law and Criminal Law will be discussed, and how both fields of knowledge nourish each other will be analysed. On the other hand, in the second point called "*influence of Legal Film Movement on the audience*", several aspects will be dealt with. Among them, how cinema is considered a tool of the so-called "mass media" and how this makes it more accessible and closer to the entire population. It will also be discussed how the judicial system is portrayed in the cinema and whether this portrayal is done in an accurate way. Finally, the question of how legal films can be used as a teaching method not only for present and future jurists, but also for society as a whole will be discussed, and also, how legal films can strengthen the relationship between the judicial system and society by bringing both subjects closer to each other.

The second part, which is made up of the third point entitled "*due process rights in Cinema*", analyses in more depth the philosophical side of the law in cinema. In it, the three main theories of the Philosophy of Law ("iusnaturalism", "iuspositivism" and "legal realism") will be analysed, exemplifying each of them with a film. Then, the most basic procedural guarantees available to defendants in criminal proceedings will be discussed, each briefly exemplified by a film, as these guarantees will then be analysed in depth with two films: Robert Mulligan's "*To kill a Mockingbird*" and Steven Spielberg's "*Minority Report*".

Finally, the third part, which is composed of the fifth point entitled "*the representation of the prisoner in Cinema*", deals with the more criminal aspects that are reflected in cinema. It will first explain what both the retributive justice theory and the restorative justice theory consist of and how each of them is reflected in a different film. It will also analyse what the concept of prisonization consists of and what consequences it has and how this process is reflected in the film "*The Green Mile*" by Frank Darabont. Finally, it will be explained what reintegration is and what its close link with prisonization implies. To complete this last explanation, two films will be used as references; on the one hand, "*Shawshank Redemption*" by Frank Darabont, which clearly shows the influence that imprisonment has on the subsequent reintegration of the prisoner; and on the other hand, "*A Clockwork Orange*" by

Kubrick, which shows very clearly the process of reintegration to which the protagonist is subjected.

2. Cinema and Law

Cinema is a powerful means of social communication because of its formidable capacity to effectively transmit ideas and messages, and to implant models of behaviour that can reach a large number of people around the world; it is an inexhaustible source of pleasure and entertainment. As Schumann states, cinema can contribute to show the various aspects of Law, as well as its multiple connections with society, politics and morality⁴.

The so-called *Law and Film* studies began to develop in the English-speaking academic environment (especially in the United States of America) at the end of the eighties of the last century. The fundamental methodological presupposition of this peculiar approach to the legal is the consideration of cinematographic material in general, and of each film in particular, as legal texts⁵.

The relationship between Law and cinema is basically twofold. On the one hand, in the contemplation of cinema as an object to which Law is applied and, on the other hand, as a sociocultural phenomenon susceptible to legal regulation by positive law.

As a result, while cinema deals with different legal institutions, the Law regulates a reality that requires its intervention; with rules of Mercantile Law (which intervene in the film industry), Civil Law (which deal with intellectual property and the image rights of actors), and even Constitutional Law, with regard to the fundamental right to artistic creation regulated in art.20.1.b) of the Spanish Constitution. In this connection, are also noteworthy regulations such as Law 55/2007, of December 28, 2007, on Cinema or Law 7/2010, on Audiovisual Communication.

⁴ SCHUMANN, Claudia & STRAND, Torill., *Cinema, Philosophy and Education*. Studies in Philosophy and Education. N°40, pp 453-459 (2023).

⁵ In the late 1980s and into the 1990s, pioneering academic publications embarked on a project to combine the study of legal themes with that of film, cinematic storytelling and popular visual imagery. Since the turn of the twenty-first century, the notion that the study of law can be integrated with that of film has spread within parts of both AngloAmerican and Continental legal academia. The combination *law and film* has been increasingly visible in lectures and law school course titles. Not quite as established as law-and-society or law-and-literature, law-and-film is gradually acknowledged in some academic conferences.

2.1. Cinema and Philosophy of Law

As Stanley Cavell mentioned, it is as if cinema was created for philosophy, to redirect all that philosophy has said about reality and its representation, about art and imitation, about greatness and conventionality, about judgement and pleasure, about scepticism and transcendence, about language and expression⁶.

Philosophy of Law is a subtype of legal study that differs from what is known as legal science, in addition to Sociology of Law and History of Law. Although its object of study is obviously Law, it also deals with other legal knowledge that other legal branches do not deal with. A clear example is that legal science interprets the rules; however, the philosophy of Law wonders what rules are and what does it consist of interpreting⁷.

It is worth mentioning that there are two types accepted in this discipline; on the one hand, certain questions to be solved (what is Law, how to know Law and how Law should be), constituting these the philosophical tripartition of Law; and, on the other hand, the critical duty of Law, that Philosophy of Law also addresses.

As far as the question of interpretation and application of the law is concerned, it is widely reflected in films, since in general, judicial films usually deal with these issues, although it is true that they tend to focus on the problem of knowledge of the facts rather than on the interpretation of the rules (for example, in the argument of the false guilty in its version of the miscarriage of justice, so often reflected in the cinema).

The philosophical-legal subject matter is also cinematographic and, therefore, this knowledge should not be insensitive to the cinema. Precisely the philosophy of law is useful because in many occasions the cinematographic work tries to transmit to the public unfounded thesis, persuading the audience, not with reasonable arguments, but manipulating their emotions.

⁶ CAVELL, Stanley., *El cine, ¿puede hacernos mejores?*. Katz Barpal Editores SL (2008).

⁷ BAUDE, William & SACHS Stephen., *The Law of Interpretation*. Harvard Law Review. Vol 130. Nº 4 (2017).

2.2. Cinema and Criminal Law

According to Andrew Welsh, media in general have been described as a shared social space wherein our perceptions, attitudes, and beliefs are developed and negotiated⁸.

Media may also influence how people think and feel about crime, justice, and the fairness of punishments, thereby necessitating an examination of the content of these media constructions⁹.

However, it is worth mentioning that the difficulty of writing a history of the crime film arises first and foremost from its uncertain definition. The crime film is to be considered as an uncertain category in which it integrates numerous different genres –film noir, gangster films, police and detective films or courtroom films between them–. Another difficulty is that of following the evolution of crime films in light of broader social transformations, in order to understand how society's attitudes toward crime and criminals have changed; as Tina Kubrak states, crime films replicate the social, political, and demographic changes occurring in society¹⁰.

3. Influence of the Legal Film Movement on the audience.

Law lives in images, through which a sense of reality is made inspired by the narratives that are most familiar to us. And nowadays, television and cinema are the best-known narrative media¹¹. Cinema and television are currently the dominant media of popular culture, due to their rapid expansion and their ability to penetrate homes of all social strata. Television, in particular, as Günther Anders put it in his "*Obsolescence of Man*"¹² (1956), made the small screen the only window through which reality breaks into the intimacy of our homes.

⁸ WELSH, Andrew., *Constructing crime and justice on film: meaning and message in cinema*. Contemporary Justice Review. Vol. 14. pp 457-476 (2011).

⁹ MARSH, Ian., *Crime, Justice and the Media*. Routledge, (2019).

¹⁰ KUBRAK, Tina., *Impact of Films: Changes in Young People's Attitudes after Watching a Movie*. Behavioural sciences. (2020).

¹¹ SHERWIN, Rickard K., *Nomos and Cinema*. UCLA Law Review 48, 6, pp. 1519-1520. (2001).

¹² ANDERS, Günther., *La obsolescencia del hombre: Sobre la destrucción de la vida en la época de la tercera revolución industrial*. Editorial Pre-Textos. N°1 edición (2001),

The television series format of recent years according to Arellano, has found (using the techniques and resources of cinema, which is why it is a tele-cinematography) an authentic ethical and legal simulation device through a network of everyday stories, generated by a powerful scripts that literally engage the audience to the new format of the cinema-series of long duration and relatively low cost for the spectator¹³.

Focusing precisely on cinema, films have always had a profound impact on people's opinions and beliefs¹⁴. Moreover, as O Berets states, "films have a greater capacity to create myths than other forms of expression"¹⁵.

Actually, cinema and society have two kinds of relationships: although in a more or less distorted way, cinema can and does participate in shaping our beliefs about the Law and popular beliefs about the Law, it can and does also participate in shaping our beliefs about legal reality¹⁶. Because as Martínez García suggests, if Law is a creator of the world, a builder of reality, so is cinema, as it contributes to the creation of the legal universe, the reality of Law.¹⁷

In summary, Law in film can be briefly explained, on the basis of three mutually dependent features: 1) it is a form of legal storytelling in which some theme related to Law predominates; 2) it uses narrative techniques that contain legal arguments; and 3) it is intended to deal directly with aspects of reality.¹⁸

3.1. Portrayal of judicial system in Cinema

Legal cinema provides a very dynamic and attractive didactic content for those who want to appreciate it. It could be said that the reflection that films project of certain legal figures and dynamics, are becoming more reliable. This increasingly faithful reflection of

¹³ ARELLANO, Walter M., *Los derechos en serie. De Breaking Bad a Black Mirror*. Editorial Libitum. pp 7. (2019).

¹⁴ ASIMOW, Michael., *Divorce in the movies: from the hays code*. Legal Studies Forum. pp 50 (2000).

¹⁵ BERETS, Ralph. , *Lawyer in Film*. Legal Studies Forum 20, 4, pp.474 (1996).

¹⁶ RIVAYA, Benjamin., *Derecho y cine, todo lo que siempre quiso saber sobre el Derecho y nunca se atrevió a preguntar*. Ratio Juris pp 149 (2017).

¹⁷ MARTINEZ GARCIA, Jesus Ignacio., *La imaginación jurídica*, Madrid: Debate pp. 17 (1992).

¹⁸ GARCÍA SALGADO, M.J., *Derecho, procedimiento, proceso. Josef K. Versus*. Una introducción cinematográfica al Derecho, Tirant lo Blanch, Valencia, pp. 110-131, (2006).

legal issues is due to the fact that more and more jurists or legal specialists are working in film productions¹⁹.

Through legal films, the public learns about legal professions, such as; the Lawyer, the Attorney General's Office, the Judge or the Public Prosecutor's Office, because they appear in them. The public can also learn about the subjects to whom Law is applied, (mainly Criminal Law), as most of the time the main characters of the films tend to be: defendants, victims of crimes or witnesses.

Likewise, the specialists in Law may know that there are different legal traditions, differentiating between *common law* countries and *civil law* countries—inheritors of Roman Law, such as Spain and other continental European democracies—. The differences are evident in the development of the processes²⁰. For this reason, sometimes the projections of certain legal issues may only be reliable in common law countries and not in civil law countries.

In other words, when watching a legal film, one can rely on its content, at least in general. The problem arises when the viewer assumes the legal content as his or her own, which is a serious mistake because it immerses the viewer in confusion. One of the main problems is that most legal films are of North American origin, and this implies that all the norms and rules that the viewer witnesses belong to this legal world, also known as *Common Law*.

3.2. Influence of Legal Cinema on the legal education of the public

As Barahona states, cinema is, is much more than the realities shown in a documentary, is a human drama, something that happens to someone, with a plot; fiction with the characters that human life necessarily has²¹.

¹⁹ PÉREZ TRIVIÑO, José Luis., *Cine y Derecho. Aplicaciones docentes*. Quaderns de cine, N°1 (2007).

²⁰ Thus, in common law the members of the judiciary and prosecution do not go through a system of merit and ability, but are appointed by the executive on the basis of their professional merits or the institution of the Jury plays a preeminent role in the administration of justice.

²¹ BARAHONA, Alonso. *Estética en Julián Marías*. Revista de Filosofía, n°12, pp 39-54, (2016).

Cinema has the value in itself of being a transmitter of human dramas. Since its beginnings, the stories told by cinema have affected generations of people through its plots²².

Popular knowledge about the Law has its origins in the movies. According to Macaulay, “most Americans’ knowledge of the legal system comes from television and movies rather than from their own experiences”²³.

It is not only the conceptual or thematic aspects that can be approached from the analysis of films with legal content, but also from a screening of well-selected films that gives the chance to build critical attitudes and common social objectives. It is worth mentioning that cinema allows the transmission of certain values that must preside over the work of the jurist. The memorable character of Atticus Finch in *To Kill a Mockingbird*, or Daniel Kaffee in *A Few Good Men* is no stranger to anyone²⁴.

Amar Rodríguez claims that there is a distinction that should be made between educating "with" cinema and educating "in" cinema. The first option refers to the fact that cinema is used as an auxiliary tool to explain the lesson or subject under study, while the second alternative, that is, educating "in" cinema, implies "teaching to watch it, enjoying it, with more critical eyes, with the aim of encouraging people to be responsible spectators, and also to know how to differentiate, consciously, between fiction and reality, between truth and lies”²⁵.

²² MARTÍNEZ-SALANOVA SÁNCHEZ, Enrique: *El profesor como orientador de los procesos de enseñanza-aprendizaje, Bases para la didáctica de la orientación laboral, las relaciones interpersonales en el aula y la formación profesional de los profesores*. Federación Andaluza de Centros de Estudios Privados (1999).

²³ MACAULAY, Stewart, *Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports*. *Law and Society Review* 21, pp. 185-218, 197 (1987).

²⁴ On the one hand, Atticus Finch is a lawyer from Alabama in 1932, whose main virtues are emotional intelligence and leadership skills. His conduct is a firm defence of legality, in a complex and adverse socio-economic context; even more, he is committed to resolving injustice within the system, while revealing its deep flaws and contradictions. On the other hand, Daaniel Kaffee is a Harvard graduate and son of a former attorney general who spends a couple of years as a defence lawyer for the military before he can begin a lucrative career as a lawyer. Initially he is portrayed as an arrogant brat who is more interested in baseball than jurisprudence. However, he turns out to be a really passionate lawyer who fundamentally holds to the deontological belief that there are some legal standards that cannot be violated.

²⁵ AMAR RODRÍGUEZ, Víctor Manuel., *Comprender y disfrutar del cine. El cine como medio educativo*. Filmhistoria online. Vol. 14. N° 2-3, (2004).

3.3. Cinema as a tool of legal education

The relevance of the study of films in Law lectures, entails understanding that Law is not an area isolated from other phenomena such as morality, politics or other common social aspects with which it normally interacts.

Historically, among jurists there has been a predominant way of understanding Law that isolated its study from morality and, consequently, from the society in which it was applied. This way of understanding Law was typical of the so-called "formalism", although it was also supported by other schools of thought, such as that of Hans Kelsen and his pure theory of Law, according to which Law could not be contaminated by sociology or ethics²⁶. It must be mentioned that Law is a set of rules, which are not precise and exact, rather they are often indeterminate, which is why the judge has a more active role than the one attributed by formalism.

It could be dangerous to assume that Law must be an isolated science, and that consequently, a jurist does not need to have other knowledge for a better understanding of Law. This change of perspective is the main reason why new ways of approaching Law have been emerging. After all, as Perez Triviño states, if a Law student only receives a strictly descriptive training or only learns to interpret legal rules in the abstract without considering the context in which they are applied, they will have a null understanding of the social reality²⁷.

The necessity for jurists to have a more comprehensive training is especially important if it is taken into account, as mentioned before, that the significance of some legal

²⁶ Hans Kelsen (1881-1973) was an Austrian legal and political thinker who belonged to the doctrine of legal formalism. He held the theory of normativism, according to which law is a phenomenon autonomous from any fact or natural law. In essence, he holds that every genuine legal problem falls within the field of pure theory and that everything that does not fall within the field of pure theory does not strictly belong to law. In accordance with this conception of legal positivism, but aware of the crisis of formalism, Kelsen develops an explanation of the law which at the same time overcomes some of its deficiencies –through the combination of both cognitive acts of law and volitional acts of legal creation within a frame– .

²⁷ PÉREZ TRIVIÑO, José Luis., *Cine y Derecho, aplicaciones docentes*. Quaderns de Cine. N° 1. Pp 69-78. (2007).

statements are not unequivocal, but rather sometimes seem to have a certain degree of indeterminacy²⁸.

Here is where the teaching of Law through film comes in. A good selection of legal films can help to fill the gaps in the training of future jurists. The student, through these films, could take an approach to legal study that is at the same time more realistic and even more interesting. The student will be able to acquire empathetically experiences and feelings, thus understanding better and completely the impact of a conflict. In the end, as Benjamin Rivaya claims, if the training of a jurist is based only on laws and codes, that jurist would be like a historian who only memorises historical news²⁹.

3.4. Cinema as a way of bringing together society and the judicial system.

Justice is an institution that tends to be always located in a certain shadow. Toharia Cortés describes it as “a kind of black box that is not very well perceived and whose component elements, internal mechanisms or operating rules are not clearly known by citizenship”.

The aforementioned author, also compares the image of justice shared by the public opinion, to that offered by a kaleidoscope: starting from the same basic elements, with a slight rotation, it is enough to produce a reorganisation of those elements, giving rise to a totally different image. This makes it difficult for citizens to express a clear and sharp image of our justice system³⁰.

It is clear that for the vast majority of people the world of justice does not represent an everyday reality, but rather something with which they have only exceptional and occasional contact. Barely 29% of Spaniards of legal age say that they have ever had direct contact (as

²⁸ RIVAYA GARCÍA, Benjamín., *Derecho y cine todo lo que siempre quiso saber sobre el Derecho y nunca se atrevió a preguntar*. Revista Ratio Juris, Vol. 1, N°3, pp 135-151, (2005).

²⁹ RIVAYA GARCÍA, Benjamín., *A propósito del crimen de lesa cinematografía*. Etica y Cine Journal. Vol 6, N°1, pp 33-39. (2016).

³⁰ TOHARIA CORTÉS, José Juan., *La imagen ciudadana de la Justicia. Foro sobre la Reforma y Gestión de la Justicia*. Universidad Autónoma de Madrid, pp 11, (2003).

plaintiff, defendant, witness, etc.) or indirect contact (as a companion of a family member or friend) with the courts of justice³¹

And it is precisely here where the media play a fundamental role, since they represent an indispensable intermediary factor in the perception of the justice system (almost all of: the 81%). Only the 21%, on the other hand, say that their own personal experience³².

Two images of Justice coexist in society: on the one hand, the image held by experts, i.e., legal professionals and justice system operators; and on the other, the image of citizens, traditionally ignored.

But the Justice/users relationship has experienced a radical change in advanced democracies as the mantra that "courts exist to serve those who use them, and not the other way around" has spread according to Álvarez³³. Indeed, it is the users (and not the operators) of the justice system who constitute its very "reason for being"³⁴.

This is where cinema could play a fundamental role. Cinema plays an important role in cultural promotion and training, and can also become a fundamental instrument for understanding the workings of Justice. And the truth is that through a film, the public could be allowed to approach in a didactic way and with an understandable language, a world as unknown and complex as the Justice system.

In fact, it is something that in recent years has been put into practice. In places such as La Rioja or Zamora, cinema cycles have been created with the aim of bringing society closer to the world of Justice, using such remarkable films as John Ford's *The Man Who Shot Liberty Valance* or *The Wrong Man* by Hitchcock

³¹ TOHARIA CORTÉS, José Juan., *La imagen ciudadana de la Justicia. Foro sobre la Reforma y Gestión de la Justicia*. Universidad Autónoma de Madrid, pp 102, (2003).

³² TOHARIA CORTÉS, José Juan., *La imagen ciudadana de la Justicia. Foro sobre la Reforma y Gestión de la Justicia*. Universidad Autónoma de Madrid, pp 104, (2003).

³³ ÁLVAREZ, Carlos Luis. *Puertas abiertas en la justicia*. El Periodico de Aragón (2006). <https://www.elperiodicodearagon.com/opinion/2006/11/14/puertas-abiertas-justicia-48070314.html>

³⁴ VIRGIN, Haydeé & GHERARDI, Natalia., *La garantía de acceso a la justicia: aportes empíricos y conceptuales*. Colec. "Género, Derecho y Justicia". N°6 (2012).

4. Due process rights in Cinema

4.1. Major theories of Law.

Throughout history, various forms of knowledge of the world have chosen Law as an object of study. What is significant is that each of these ways of knowing the law, developed its own idea about it³⁵. These theories over the years have tried to answer many questions related to what Law is. In addition, it is worth mentioning that the well-known legal cinema has projected different theories of Law in its films, in different ways. The following is a brief exposition of what these theories consist of, exemplifying them with a film.

4.1.1. Iusnaturalistic theory

It is a iusphilosophical trend that divides human law (that created by human beings) from natural law (higher or divine law). Human law created by humans through legal norms, derives from a natural (or higher) law that is composed of intrinsically fair values and principles³⁶.

According to this theory, a rule that does not conform to natural law is not a valid rule of human law. Moreover, human law does not establish rights or obligations, since these are prior to any legal norm. Human law only declares rights that already exist in a higher order. In other words, the rules that constitute the law are fair rules; those that are not fair, are not valid rules and therefore do not constitute the law. The law of humans is equivalent to the values and principles of higher law³⁷.

For iusnaturalists, the law is obeyed because it is in perfect harmony with justice, in other words, all human beings have engraved in their hearts what is fair and what is unfair, which is why only the Law is obeyed, because it is fair.

³⁵ VALENCIA RESTREPO, Hernán., *Grandes teorías del Derecho: iusnaturalismo, positivismo y realismo*. Revista Facultad de Derecho y Ciencias Políticas. Nº 101, pp 51-62, (1999).

³⁶ Thomas Aquinas, Aristotele or John Locke are some of the main philosophers who defended iusnaturalism. All of them held that political power was obligated to preserve and not to interfere with the natural rights of the governed. Both human law and the acts of rulers had to be in accordance with those higher rights and in no way contradict them.

³⁷ CARRILLO DE LA ROSA, Yezid., *El pensamiento iusnaturalista y la interpretación jurídica*. Revista Juridica Mario Alario D'Filippo. Vol. VI, Nº12, (2014).

To exemplify how both iusnaturalism and iuspositivism are shown in cinema, I will make use of the same film: *Sophie Scholl. The Last Days*, by director Marc Rothemund. It shows the end of the life of the protagonist Sophie, who was a member of the student resistance group The White Rose, which opposed the Nazi regime by spreading critical pamphlets against it. Iusnaturalism is present in the film through Sophie's character, as for her, there are principles of justice above and beyond positive law, principles that seem to have always been present³⁸. This is reflected throughout the film, for example when Sophie mentions that if one cannot abide by the Law, regardless of who dictates it, one must follow one's conscience.

4.1.2. Iuspositivist theory

Legal positivism was born as a rejection of the existence of a single and univocal Law coming from another natural law. Each social group creates its own Law in order to preserve its unity, without necessarily thinking of abstract referents of justice as its purpose is primarily pragmatic.

In this case, justice is not necessary to justify the validity of the rule, only a legitimate body and an adequate procedure are necessary. Nor will it be necessary to support the force of the Law; the basis for the binding nature of the Law will be the legitimised power that the social group concentrates in order to ensure that the rules are obeyed³⁹.

For the positivist school –among whose main thinkers Kelsen, Hart or Bobbio are present –⁴⁰. Law is built on the basis of norms designed by the legislator, as the representative of the social group, but it is the Judge who enforces the norms.

As already mentioned before, in the film *Sophie Scholl. The Last Days*, iuspositivism is also shown. In the film, a double face is shown; on the one hand the position of officer

³⁸ CENTENERA SÁNCHEZ-SECO, Fernando. «*Sophie Scholl. Los últimos días: sobre iusnaturalismo, positivismo y resistencia al poder.*». Revista de educación y derecho, Núm. 13, (2016). <https://raco.cat/index.php/RED/article/view/307233>.

³⁹ MORESCO, Juan José., *El positivismo jurídico y la aplicación del Derecho*. Cuadernos de Filosofía del Derecho, 27 (2004).

⁴⁰ Hans Kelsen, Herbert L.A. Hart and Norberto Bobbio, three of the most prominent philosophers or theorists of law in the twentieth century, attempt to offer descriptions of the tradition of legal positivism. All three are characterised by their defence of scientific rigour in the study of law.

Mohr which can be related to iuspositivism, and on the other hand, Sophie's testimony which is framed within iusnaturalism. A clear example of the first side, that of iuspositivism, can be seen in certain quotes from the film reproduced by the aforementioned officer Mehr, among them: "*because the law dictates it. Without the law there is no order*", or "*Here is the law and here are the people. It is not my duty to check if both are congruent and if not, to find what is wrong*"⁴¹. Thus concluding that Mehr's character does not go beyond the observance of the Law, since the Law guarantees desirable aspects such as order.

4.1.3. Realistic theory

Legal realism is a philosophical doctrine that identifies Law with normative effectiveness, with state force or with the probability associated with judicial decisions. For legal realists, the Law is not formed by statements with ideal content about what is obligatory, but by the rules actually observed by society or imposed by state authority. The main objective of legal realism is to highlight the real effectiveness of the Law. For this line of thought, the legal rules coming from the sources of law are nothing more than mandates that are not addressed to particular subjects like us, but directly to regulate the behaviour of the judge⁴².

According to this view, the basis for the fulfilment of the Law is the sentence and not the Law. The social group does not entrust its coercive power to the legislator (as the positivists thought), but to the judge.

This philosophical doctrine has had diverse manifestations in different countries, thus acquiring its own characteristics and distinguishing one from the other, although maintaining a congruence in its theoretical basis. Thus, it is possible to distinguish Scandinavian, Soviet and North American realism⁴³.

⁴¹ CENTENERA SÁNCHEZ-SECO, Fernando. *Sophie Scholl. Los últimos días: sobre naturalismo, positivismo y resistencia al poder*. Revista de educación y derecho, (2016). <https://raco.cat/index.php/RED/article/view/307233>.

⁴² MARZOCCO, Valeria. *El Realismo jurídico americano. Perspectivas de reconstrucción y nuevas trayectorias interpretativas, American Legal Realism. New perspectives and interpretations*. Revista Derechos y libertades. Nº 39, pp 157-175, (2018).

⁴³ CAMPOS FLORES Evelyn Patricia. *El realismo jurídico norteamericano: Escuela de Derecho*. Universidad de Chile Facultad de Derecho (Departamento de Ciencia del Derecho), pp 10-17, (2013).

- Scandinavian Realism⁴⁴: For this school, Law is a collective psychic phenomenon, which consists of the existence of subjective rights and duties as something different from empirical reality, which fit only within the human imagination, from which derives its binding force⁴⁵.
- Soviet realism⁴⁶: The theoretical foundation of Soviet legal realism is the Marxist-Leninist doctrine, and is based on the idea of overcoming bourgeois law as a tool of class domination. The Law is at the service of the people insofar as the state apparatus protects it through its obligatory nature, maintaining and developing social relations that are beneficial to the proletarian class⁴⁷.
- American Realism⁴⁸: The conception of the Law is considered as a means to social ends, and not as an end in itself; so that each part of it is constantly to be examined for its purpose, and for its effect, and to be judged in the light of both and of the relation between one and the other⁴⁹.

One of the examples of how legal realism is reflected in cinema is through the film *The Rite* by director Ingmar Bergman. The film brings to life three Swiss nationalised actors, members of a small theatrical company, who have been reported for obscenity on the occasion of a theatrical number performed by them, called *The Rite*. During the film, they are subjected to several interrogations by a judge in charge of the proceedings. The tension grows progressively during the process, deepening more and more in the internal and external conflicts of the characters. In the last scene, the three actors perform the theatrical number for which they are reported to the judge, in revenge for his psychological pressures. The judge

⁴⁴ Some representatives of Scandinavian legal realism were Alf Ross or Karl Olivecrona. According to the latter, the law is nothing more than a psychic state materialised by the continuous habituality of practices of groups of individuals who through these practices maintain the status of the law. Moreover, they believe that they have to follow such practices in the future, convinced of the fact that failure to do so can certainly lead to a punishment.

⁴⁵ MALMINEN, Toni., *Realismo jurídico escandinavo: algunos asuntos inconclusos*. Isonomía. N° 50 (2019).

⁴⁶ Pyotr Stuchka and Evgeny Pashukanis were among the main representatives of Soviet legal realism. Both argued that law only makes sense in situations of commodity exchange, i.e. in bourgeois mercantile society. Therefore, law and state had to disappear at the achievement of communist society.

⁴⁷ CAMPOS ZAMORA, Francisco J., *Nociones fundamentales del realismo jurídico*. Revista de Ciencias Jurídicas. N°122, (2010).

⁴⁸ The representatives of American legal realism are Oliver Wendell Holmes Jr. (often regarded as the founding father) and Karl Llewellyn. Both agreed that law and society are always in flux, and courts adjudicate with an eye to law's practical effects.

⁴⁹ LEITER, Brian., *Realismo jurídico estadounidense*. Enciclopedia de Filosofía y Teoría del Derecho. Vol.1, pp 241-276, (2015).

dies of a heart attack from the shock of the performance. This is the most revealing scene of the film, which shows that the law is above all an existential psychological phenomenon, where the form itself and the alleged justice of its are relegated to the second place, while human attitudes and behaviours derived from the rules are what really matters to the judge in his decision-making activity⁵⁰.

4.2. Procedural safeguards in Cinema.

It could be said that procedural guarantees are part from iusnaturalism, i.e. they are attributes that every human being possesses by the mere fact of being a person (they are rights that have their basis in the human condition). However, it could also be said that these procedural guarantees are fruit of iuspositivism, since they are applied by humans in order to establish coexistence within a society, and they are also supported by legislation.

This work will focus primarily on the procedural safeguards that are present in criminal procedure, since, as mentioned before, in legal cinema, plots tend to be based on criminal matters.

In the criminal field, the following can be cited as generic guarantees: the right to effective judicial protection, the presumption of innocence, the right to defence and due process. Due to the fact that most films in the legal field are of the courtroom drama genre⁵¹, the procedural safeguards most frequently projected in films are the last three mentioned.

The right to effective protection refers to the right that every person has to invoke the activity of the judicial bodies in defence of their legitimate interests. Such a decision must in any case be complied with, but it is not required to be favourable to the claims of the party initiating the proceedings in order for the right to be considered to have been observed. This

⁵⁰ GOMEZ GARCIA Juan Antonio, *Derecho y cine: el rite o el derecho y el Juez según el realismo jurídico escandinavo*. Facultad de Derecho, UNED (Departamento de filosofía jurídica). Revista de Derecho UNED, N° 3, (2008).

⁵¹ The American Film Institute (AFI) defines "courtroom drama" as a genre of film in which a system of justice plays a critical role in the film's narrative. Legal dramas have also followed the lives of the fictional attorneys, defendants, plaintiffs, or other persons related to the practice of law present in television shows or film. It is also a subgenre of dramatic fiction which focuses on law enforcement, crime, detective-based mystery solving, lawyer work or civil litigation.

right also includes the obligation that judicial decisions must be sufficiently reasoned⁵².

A good example of this is Billy Wilder's "*Witness for the Prosecution*". It is set in 1952 London, where a man is the prime suspect in the murder of a wealthy elderly widow who is to inherit the estate. The core of the film revolves around Leonard's defence, which is made difficult by circumstantial evidence and the lack of a convincing alibi.⁵³

On the other hand, the right to due process of law is shaped by the minimum procedural principles and assumptions that any judicial process must meet to ensure certainty for the accused, such as, the principle of impartiality of judges. According to this principle, everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial judge⁵⁴. The right to due process of law also includes the right to a trial without undue delay. This is based on the fact that, in order for jurisdictional activity to achieve its objectives of justice, it is necessary for the process to be carried out expeditiously without any unjustifiable delay. This is reinforced in criminal proceedings due to the reason for the individual's recognition of the need to free himself as soon as possible from the state of suspicion that weighs on his shoulders and from the restrictions of rights that the unfailing criminal process entails⁵⁵

Another film projecting due process of law is Alan Parker's "*Midnight Express*". In this film, Billy Hayes, a young American, is arrested at Istanbul airport on charges of drug trafficking, one of the most serious crimes in Turkey. The film shows how Billy Hayes's right to due process is entirely denied, as the plot reveals judges who lack independence and impartiality, as well as a constant violation of the law in the hearing of the prisoner⁵⁶.

The right to the presumption of innocence is universally recognised as a fundamental

⁵² CARRASCO DURÁN, Manuel., *La definición constitucional del derecho a la tutela judicial efectiva*. Revista de Derecho político, pp 13-14, (2020).

⁵³ TAJADURA TEJADA, Javier., "*Testigo de cargo*". *El derecho a la tutela judicial efectiva. Derecho a un proceso debido*. El Derecho constitucional en el cine. Universidade da Coruña. pp 195-202, (2020).

⁵⁴ PICADO VARGAS, Carlos Adolfo., *El derecho a ser juzgado por un juez imparcial*. Revista de IUDEX, N°2, (2014).

⁵⁵ ESPARZA LEIBAR, Iñaki., *El principio del proceso debido*. J.M Bosch Editor, (1995).

⁵⁶ ÁLVAREZ GARCÍA, Samuel., *Expreso de medianoche*. Segundo Ciclo Cine Debate: "Sistema penitenciario, adolescentes que infringen la Ley Penal y Prevención de la Tortura a través de un enfoque Cinematográfico". Colección CNDH, (2017).

human right, as well as a basic principle in the administration of criminal justice⁵⁷. This guarantee, recognises the right of a person who has been subject to criminal prosecution to be considered and treated as innocent by the legal system as a whole until there is a final judicial proceeding that establishes that the subject has committed criminal conduct⁵⁸.

Another film in which the right to the presumption of innocence is projected is Jim Sheridan's *In the Name of Father*. This film describes the odyssey of Gerry Conlon, his family and a group of friends in British prisons accused of acts they did not commit, could never have committed, and whose arrest and subsequent conviction took place on the basis of one of anti-terrorist laws⁵⁹ that allowed detainees to be held in detention and custody without being brought before a court for no less than nineteen days. The arrested were subjected to endless interrogations, pressure, torture and aggression, all aimed at obtaining confessions in which, rather than the truth, confessed perpetrators were sought to be "handed over" to the political hierarchy and to a society frightened by the proliferation of Irish terrorism in England.

Lastly, the right of defence is presented as a guarantee but also as a balance between personal interests and those of society. It is a fundamental attribute of the individual, closely related to the human condition itself⁶⁰. It is the right of every person to have the time and means necessary to exercise his or her defence in all proceedings in which he or she is involved⁶¹. Through the exercise of this right, the accused is guaranteed the technical assistance of a defence lawyer and is granted the necessary postulatory capacity to effectively oppose the punitive claim and to be able to assert the constitutional right to freedom of the citizen in the process.

Destin Cretton's *Just Mercy* is a film about the right of defence. It is about a recent

⁵⁷ From the outset, it should be noted that the right to the presumption of innocence is not only a guarantee that the accused is considered innocent, but its most important effect is that it requires that the person facing criminal proceedings be treated, in the various sectors of the legal system and social life, as a person who has not yet been found to be criminally responsible.

⁵⁸ STUMER, Andrew., *La presunción de inocencia. Perspectiva desde el Derecho probatorio y los derechos humanos*. Mariscal Pons, (2018).

⁵⁹ Anti-terrorism laws are those created for the purpose of combating terrorism. Some governments that have implemented such laws have been denounced for violating the most fundamental rights and freedoms of their citizens.

⁶⁰ NEAGU, Ion., *Tratado de procedimiento penal*. Parte general, Edición Universul Juridic, Bucarest, p. 98, (2010).

⁶¹ IONESCU, Steluta., *El derecho de defensa*. Revista de la inquisición (intolerancia y Derechos Humanos). Vol 15, pp 243-258, , (2011).

Harvard Law graduate who receives lucrative job offers but decides to head to Alabama in the late 1980s. His goal is to defend a number of African-American prisoners on death row who have been victims of unfair and clearly racist treatment by the courts, who have been wrongly convicted, or who lacked the resources to have adequate legal representation⁶².

4.3. Defendants' due process rights shown in Cinema.

4.3.1. Projection of different procedural safeguards in the film "To Kill a Mockingbird".

In brief, *To Kill a Mockingbird* (Robert Mulligan, 1962) is the story of the trial of a black man, Tom Robinson, for the rape of a white woman, Mayella Ewell, in racist Alabama in the 1930s. Appointed to defend Robinson, Atticus Finch takes the task seriously, drawing upon himself and his children the slurs and marginalisation of neighbours. At trial he proves that Robinson could not have raped Mayella, showing that her attacker was left-handed with two good arms, whereas Robinson had lost the use of his left arm in a cotton-gin accident. Robinson is convicted nonetheless. Indeed, shortly afterward, Tom is killed, shot while climbing a prison fence in full view of guards⁶³.

In the trial section of the film, it is portrayed as a description of a trial in which a good number of the guarantees for the defendant are shown, perhaps not formally but in substance. It is true that, on the surface, Tom is subjected to a "fair" trial, with legal assistance, a hearing and the possibility of contradiction. However, public opinion has already judged and condemned the defendant even before Atticus has the opportunity to intervene.

Taking as a starting point the violation of the principle of the presumption of innocence that occurs in the trial against Tom Robinson, a reflection on the concept of the presumption of innocence and its procedural and extra-procedural dimension can be incorporated. For as mentioned in the film: "*Atticus had used every tool at the disposal of free men to save Tom Robinson, but in the secret courts of men's hearts Atticus had no case.*"

⁶² MARQUETTE, Dominique., *The construction of Racialized Criminality in Film: A A Critical Analysis of The Shawshank Redemption (1994) and Just Mercy (2019)*. Social Justice and Equity Studies, Brock University. (2020).

⁶³ DARE, Tim., *Lawyer, Ethics and To Kill a Mockingbird*, Philosophy and Literature, (2001).

Tom was a dead man from the moment Mayella Ewell opened her mouth and screamed". Underlining that those courts were not governed by presumptions of equality and innocence, but by prejudice and bigotry.

The film is also an appropriate channel to reflect on the absence in Atticus's trial of any evidence against him, which is the right of any defendant not to suffer a conviction unless guilt has been established beyond reasonable doubt⁶⁴. In this regard, throughout the film, the prosecution does not present the slightest medical evidence that the crime attributed to Tom Robinson ever took place. Instead, it relies on the testimony of two witnesses whose testimony has not only been seriously called into question by the defence, but has been flatly rejected by the accused. The only evidence presented by the prosecution is the two testimonies of the victim, Mayella Ewell, and her father Boob Ewell. It is at this point that, beyond reasonable doubt of the defendant's guilt, Atticus considers that the case should not even have been brought to court, as the prosecution had not produced the slightest medical evidence that the crime attributed to Tom Robinson ever took place.

In Spanish Law, when the victim's statement is the only evidence for the prosecution, according to the Supreme Court, the sentencing court that hears it must assess and justify its credibility from a threefold perspective⁶⁵: firstly, that there is no subjective disbelief, i.e. that there is no initial suspicion of its veracity⁶⁶; secondly, there must be verisimilitudes in the victim's account and it is convenient that there are corroborations that strengthen the credibility of the account; lastly, there must be persistence in the incrimination⁶⁷.

In response to this threefold request it may be reproduced here the statement made by Atticus in his plea that there is no crime other than having broken a social code, that which prohibits a relationship between a white woman and a black man.

Finally, with regard to the right to defence, technical defence in criminal proceedings is essential, not only because it is a fundamental right, but also because it is the condition for

⁶⁴ STC 137/1988, of 7 July 1988, expresses it very well by stating that "a person accused of an offence cannot be considered guilty until this is declared in a conviction"; the premise of the rule of judgement: "this conviction is only admissible and lawful when there has been evidence which, produced with due process and freely assessed by the criminal courts, can be considered to be evidence for the prosecution".

⁶⁵ GUTIÉRREZ SANZ, Maria Rosa., *El uso de la literatura como fórmula de enseñanza del Derecho Procesal: análisis del libro Matar a un ruiseñor*. Reduca (Derecho) Serie derecho Procesal 5. Pp 144-159, (2014).

⁶⁶ STS 667/2003 de 7 de Mayo.

⁶⁷ STS 1046/2004 de 5 de Octubre.

the State to be able to validly exercise *ius puniendi*. If the accused is not assisted by a lawyer, the courts will not be able to impose any penalty⁶⁸. In the film, Atticus Finch is forced to accept the defence of a man and accepts it even though he is aware that this will result in a harsh social sanction. Moreover, Atticus tries to secure the best possible defence for Tom Robinson, because as he states in the trial: “... *There is one way in this country in which all men are created equal— there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein and the ignorant man the equal of any college president. That institution, gentlemen, is a court. . . . Our courts have their faults, as does any human institution, but in this country our courts are the great levellers, and in our courts all men are created equal.*”

4.3.2. Projection of different procedural safeguards in the film “*Minority Report*”.

If the previous film showed different procedural guarantees, in *Minority Report* none are projected, as the plot depicts a utopian society in which the detained person does not enjoy any fundamental rights.

Minority Report is a science fiction film directed by Steven Spielberg in 2002. It is based on the story of the same name by Philip K. Dick published in 1956 . It is set in the year 2054, starring Captain John Anderton, head of the Washington D.C. PreCrime force. This police organisation is in charge of stopping crimes before they happen, thanks to the precognitive visions of three mutant brothers with certain mental disorders. These are called “PreCogs”. The PreCogs, beyond their superhuman powers, seem to have an advanced mental disability that does not allow them to communicate normally or to describe them. To make themselves useful to the PreCrime cause, the mutants are connected to a machine that can translate and visualise their visions. In this way, the PreCrime division arrests future perpetrators of crime, sentencing them to the penalty they would have deserved if they had actually committed the crime. In a few words, there is a crime without a crime. The action takes place in a future time that will never be present thanks to the intervention of PreCrime. A person is then blamed for committing a crime in a timeline in which it will not occur –thanks to the arrest allowed by premonition –⁶⁹.

⁶⁸ LOVELL BANKS, Taunya., *To Kill a Mockingbird (1962): lawyering in an unjust society*. University of Maryland Francis King Carey School of Law. (2006).

⁶⁹ SALVI, Nicolas & NIGRI, Santiago., *Minority Report: the Road to a Deterministic Theory for the Philosophy of Criminal Law*. Opinión Jurídica. (2022).

As it is known, Spanish Criminal Law is a law of facts, thoughts do not commit crimes and cannot be punished, and therefore only those acts committed intentionally are punishable under Criminal Law. This distinction between punishing actions and punishing thoughts is what gives rise to the Criminal Law of guilt and the Criminal Law of dangerousness⁷⁰. Under the latter, there are Criminal Law rules in which the prerequisite is not an act constituting an offence but a state of dangerousness⁷¹.

This contrasts with what can be seen in the film, where it is clear that the law of dangerousness is being applied, since the punishment is for acts that have not yet occurred. Thus, in one of the first scenes, the protagonist John Anderton, head of the PreCrime police force, suddenly enters a house with a squad of police officers in order to prevent a crime of passion that is seconds away from being committed⁷².

Actually, rather than a penalty, the sanction applied in the film is a security measure, that is, a treatment aimed at preventing a dangerous subject from committing a crime.

This preventive logic, however, not only implies a widening of punitive networks, but also an increase in their rates of violence. If, based on the preventive idea, the possibilities of applying pre-trial detention increase, custodial sentences become longer, resulting in the construction of a system of restriction of rights without any direct relation to any harm or without having affected a protected legal right⁷³.

It should also be noted that in the film, the criminal field itself, it is a matter of judging acts that have not been committed and are likely to be committed. Consequently, those criminals have not done anything reprehensible to the legal system yet (they are still innocent), they have not broken any law, but they will be necessarily an offender in their

⁷⁰ LASCURAIN SÁNCHEZ, Juan Antonio., *Manual de Introducción al Derecho Penal*. Agencia Estatal Boletín Oficial del Estado, (2019).

⁷¹ In Spain, in the 1970s, the Law on Dangerousness and Social Rehabilitation existed, which punished pre-criminal and post-criminal dangerousness. However, with the 1978 Constitution, this law was eradicated when the Constitutional Court considered that pre-criminal sentences were unconstitutional and post-criminal sentences infringed the principle of non bis in idem.

⁷² NOVELL, Noemi., *Vigilancia extrema y justicia preventiva: narración y espectacularidad en Minority Report*. Revista de Comunicación Audiovisual. (2009).

⁷³ BÖHM, María Laura., *Justicia preventiva*. Revista penal N° 37. pp 46-60. (2016).

future⁷⁴. However, they are not given any margin of defence and are totally deprived of their presumption of innocence. In the film, this is projected in the following way: "*because we stopped them before they could commit any act of violence. Thus, the commission of the crime itself is an absolutely metaphysical question. We claim that they are guilty. And they, in turn, constantly claim that they are innocent. And in a sense, they are innocent... In our society we don't have major crimes, but we have a whole detention camp full of potential criminals, criminals who would indeed be criminals*".

Another thing that is impossible to ignore is the absence of any judicial process. When the police arrest a suspected criminal, they scan his eyes for identification. Moreover, the prison system is a dream-like panopticon of towers of individual glass capsules in which prisoners are a captive audience to the perpetual projection of images of their past crime⁷⁵. In this way, any procedural guarantees or fundamental rights present at the time of the speedy trial are completely obviated.

5. The representation of the prisoner in Cinema.

There has been a growing interest among lawyers and criminologists in commenting on and analysing how their field of study is represented in popular culture; such as films and TV series. Portrayals of crime and the Law, in films and series, have proved to be a particularly popular area of debate⁷⁶.

Bougadi says the media assists people in the construction of social reality. When, in fact, it comes to a reality such as prison, for which there is no information from other sources, being reasonable that imaginary representations of prison have a greater influence on the public⁷⁷. Moreover, prison cinema provides an imaginative resource that can delimit the boundaries of the audience's interpretations, evoke feelings of empathy and, ultimately,

⁷⁴ SALVI, Nicolas & NIGRI, Santiago., *Minority Report: the Road to a Deterministic Theory for the Philosophy of Criminal Law*. Opinión Jurídica. (2022).

⁷⁵ BOND, Cynthia D., *Law as cinematic apparatus: image, textuality and representational anxiety in Spielberg's Minority Report*. Cumberland Law Review. Vol.37, N°25. (2007).

⁷⁶ WILSON, David & O' SULLIVAN, Sean., *Re-theorizing the penal reform functions of the prison film: Revelation, humanization, empathy and benchmarking*. Theoretical Criminology. (2005).

⁷⁷ BOUGADI, Stavroula G., *Fictional Representation of Prison in Films and TV's Series Genre: Public and Academic Perceptions of Prison*. Forensic Research & Criminology International Journal. Vol.2. (2016).

explain their experience of prison⁷⁸.

The prison sub-genre, usually called prison cinema⁷⁹ is identified by the space in which the stories are set, which is the prison as a physical closed place to serve a sentence. There may be a general belief that this sub-genre deals only with plots based on deprivation of liberty and the physical and psychological deterioration caused by confinement, which can occasionally generate a situation of conflict that the protagonist has to overcome, with other antagonists –officials, guards, hostile prisoners– and collaborating characters appearing. On many occasions, innocent characters, victims of a conspiracy or miscarriage of justice, with whom the viewer can identify, may also appear⁸⁰. However, prison films can go further, to the point of showing different theories of justice –such as retributive or restorative justice– or different phenomena –such as prisonization– that prisoners undergo when they enter prison and deal with during their consequent reinsertion. This is precisely what the following pages will be about: an analysis of the aforementioned concepts and their projections in different films.

5.1. Retributive and restorative theories in Cinema

The retributive theory, preconceived by the original Law of the Talon, aims at the imposition of punishment that corresponds to the gravity of the crime. Not surprisingly, it is also called the "theory of justice" since its aim is to balance the punishment to the crime committed, the penalty appearing as a compensatory retribution. Thus, it introduces a barometer, a scale of values or hierarchical legal goods, to qualify the seriousness of criminal behaviour according to the graduable notions of good and evil shared by society⁸¹. Retributive theories admit that the fact that a person has committed a crime is a necessary and sufficient condition for the imposition of punishment, and that the punishment must be

⁷⁸ WILSON, David & O'SULLIVAN, Sean., *Images of Incarceration: Representation of Prison in Films and Television Drama*. Waterside Press. (2004).

⁷⁹ Prison cinema is an important variant of the "noir" genre which had its epicentre in Hollywood, but which has spread to all cinematographies. To summarise, prison cinema can be said to be a sub-genre of "film noir" in which films usually feature a prisoner, an escapee and someone who ends up in jail.

⁸⁰ SÁNCHEZ NORIEGA, José Luis., *La prisión, espacio cinematográfico y lugar de memoria en el cine español*. Dossier: "En cuerpo y alma". Rusia y España bajo la perspectiva transnacional. Vol. 38. (2016).

⁸¹ SERRA VILA, Alexandra. *Actualidad de las teorías de la retribución en el Derecho penal. De la Ley del Tali6n a las corrientes neo-retribucionistas: las doctrinas alemana y estadounidense*. Universitat Pompeu Fabra Barcelona. (2015).

proportionate to the crime committed in order to be just. Among these theories there is agreement on the criteria that should guide the imposition of punishment but not on the general justification of the institution of penalty⁸².

It is therefore normal of retributive justice to give a wrong for a wrong, i.e. to attribute the offender with a punishment, especially that of deprivation of liberty for the wrong done to the victim. It is the legislator who measures the punishment that the criminal must compensate, especially to society, for what the offender did to a member of the community. According to Márquez Cárdenas, retributive justice tends to stigmatise people, looking at them indelibly with a negative label. The restorative approach confronts and disapproves of crime while affirming the intrinsic value of offenders⁸³

Adriana Botero suggests that one of the best known retributionists is Kant. Immanuel Kant's approaches to penalty and punishment have been understood as reflecting a "strong" retributive theory. That is, a theory of punishment that does not rely on crime control and crime reduction arguments to justify the imposition of punishment. That is to say, according to it, the offender is not punished to prevent others from imitating his behaviour –general prevention–, nor to prevent the punished from reoffending –special prevention– . It does so because the offender deserves to be punished and society must condemn the actions of criminals⁸⁴.

One of the films that projects this retributionist vision very well is Kieslowski's *Thou Shalt Not Kill*. Although the film does not explicitly focus on retributive justice, it presents elements that can be interpreted as a retributive vision of justice. The plot follows Jacek, a young man living in Poland, who is angry with society and his life, which leads him to commit a brutal murder. During the film, Jacek's pursuit and capture is shown, as well as his subsequent trial and death sentence. The judicial process unfolds in great detail and focuses on the search for truth and justice. The trial shows a retributive view of justice by presenting

⁸² ALPACA PÉREZ, Alfredo., *Sobre la imposición de la pena como retribución*. Revista Electrónica de Ciencia Penal y Criminológica. (2020).

⁸³ MÁRQUEZ CÁRDENAS, Álvaro E., *La justicia restaurativa versus la justicia retributiva en el contexto del sistema procesal de tendencia acusatoria*. Prolegómenos Derechos y valores. (2007).

⁸⁴ BOTERO MARTINEZ, Adriana., *La pena en Kant: ¿Retribucionista en lo moral, pero no en lo legal?*. Estudios de Derecho, Vol. 67, N°150. pp. 85-112. (2010).

murder as an abominable act and punishment as a necessary form of justice⁸⁵.

In the film, the contrast between rigid justice and the way of judging sensitively based on the specifics of each person or situation can be observed, showing as an example the prevalence of such "rigid justice". In this sense, the film focuses not so much on the rehabilitation of the killer, but on the state's pursuit of justice⁸⁶, suggesting that murder is a grave act that requires a proportional response, and that justice is achieved through retribution.

"*Thou shalt not kill*" presents elements that can be interpreted as a retributive view of justice, focusing on the necessity of punishing the guilty for their crime, and completely ignoring the underlying causes of Jacek's violent behaviour and possible long-term solutions to prevent violence and crime

Opposite to the retributive justice, there is also the restorative justice theory, which is not easily defined because as Kathleen Daly claims, "it encompasses a variety of practices at different stages of the criminal process, including diversion from court prosecution, actions taken in parallel with court decisions and meetings between victims and offenders at any stage of the criminal process". For virtually all legal contexts involving individual criminal matters, restorative justice processes have only been applied to those offenders who have admitted to an offence; as such, it deals with the penalty phase of the criminal process for admitted offenders⁸⁷. However, if a definition of this concept had to be given it would be the following given by Christian Gade: "restorative justice is a theory of justice that emphasises repairing the harm caused or revealed by criminal behaviour. It is best accomplished through inclusive and cooperative processes"⁸⁸.

The "humanisation of the penal process", championed by the masters Beccaria⁸⁹, has

⁸⁵ GARCÍA AYALA, José Antonio & BETZABEÉ GONZÁLEZ DE ARCE ARZAVE, Rocío., *Cine, ciudad y arquitectura Análisis cinematográficos para entender los espacios habitables en el siglo XXI*. Instituto Politécnico Nacional Tecamachalco. (2018).

⁸⁶ SERRA, Silvia., *No matarás, sugerencias para un lectura desde la problemática de la violencia*. Archivo Filmico Pedagógico.

⁸⁷ DALY, Kathleen., *Restorative justice: the real story*. Punishment and Society. (2002).

⁸⁸ GADE, Christian. *Is restorative justice punishment?* Conflict Resolution Quarterly. (2020).

⁸⁹ The fundamental work on the legal aspect of the Enlightenment was Beccaria's "*On Crimes and Punishments*" (1764). It sets out the objections that the Enlightenment thinking formulated to the legislation of the Ancien Regime. It expresses the main principles advocated by Beccaria, among them: the consecration of the principle of humanity of punishment consisting of the opposition to the traditional link between crime-sin and the

been a universal background from which restorative justice emerged in the 1970s, as a form of mediation between victims and offenders. In the 1990s broadened its scope to also include supportive communities, involving family and friends of victims and offenders in collaborative procedures called "restorative meetings" and "circles"⁹⁰.

Taking all into account, restorative justice is a new way of looking at criminal justice that focuses on repairing the harm caused to people and relationships rather than punishing offenders⁹¹. Moreover, as Márquez Cárdenas states, through mediation, it seeks to find solutions that encourage those involved, to listen to each other rather than use force, to explore settlements rather than order, to seek solutions that encourage compensation rather than retaliation⁹². In this way, the parties involved in a conflict arising from the commission of a crime collectively resolve to solve it by addressing the consequences of the crime and its implications for the future. In other words, instead of only the State and the offender taking the lead, victims and communities are also included.

According to McCold and Wachtel, it could be said that restorative justice is a new way of considering criminal justice, which concentrates on repairing the damage caused to people and relationships rather than punishing offenders⁹³. In this way, it seeks to bring Criminal Law much closer to what the citizens expect from it, and instead of being exclusively sanctioning and punitive, it begins to generate the capacity to be able to present different alternatives to regulate the conflicts that have been presented to Criminal Law⁹⁴. Finally, the restorative result is understood as the agreement aimed at attending to the individual and collective necessities and responsibilities of the parties, and at achieving the reintegration of the victim and the offender into the community in search of reparation, restitution and community service⁹⁵.

establishment of extremely cruel punishments; and the constitution of the basis of a liberal criminal law based on a general humanisation of punishments and the abolition of torture.

⁹⁰ MÁRQUEZ CÁRDENAS, Álvaro E., *La Justicia Restaurativa versus la justicia retributiva en el contexto del sistema procesal de tendencia acusatoria*. Prolegómenos - Derechos y Valores. N° 20. pp 201-212. (2007).

⁹¹ Restorative justice seeks to overcome the identification of punishment with revenge, typical of a discourse in which the main thing is to react against the offender with a pain similar to that which he produced in the victim.

⁹² MÁRQUEZ CÁRDENAS, Álvaro E., *La doctrina social sobre la Justicia Restaurativa*. Prolegómenos. Derechos y Valores, vol. 7. N° 24. pp 59-75. (2009).

⁹³ McCOLD. Paul & WACHTEL, Ted., *In Pursuit of Paradigm: A Theory of Restorative Justice*. Paper presented at the XIII World Congress of Criminology. (2003).

⁹⁴ HIDALGO-HUERTA, Juan José., *Justicia Retributiva, Justicia Restaurativa, Mediación Penal y Crítica al Modelo del Proceso Penal*. Revista Jurídica Online. (2017).

⁹⁵ RUGGE, Tanya; BONTA James; WALLACE-CAPRETTA Suzanne. *Evaluation of the Collaborative Justice Project: A Restorative Justice Program for Serious Crime*. Public Safety and Emergency Preparedness Canada. (2005).

A film that shows very well the restorative theory is Tim Robbins' *Dead Man Walking*. The play centres on Sister Helen Prejean, a catholic nun, who receives a letter from a death row inmate by the name of Matthew Poncelet. Poncelet was sentenced to Louisiana's death row for killing two young teenagers, Hope Percy and Walter Delacroix. Although Poncelet was sentenced to death. By becoming Matt's spiritual advisor, Helen is able to get inside the mind of a convicted killer. With letters and visits, Prejean is able to discover and understand a man that the rest of the world only views as a cold-blooded killer⁹⁶.

Prejean becomes emotionally invested in both Poncelet and the case. She fights through appeals courts and letters to the Governor for Poncelet's pardon. In the end, Poncelet is put to death by use of lethal injection. As spiritual advisor, Prejean helped Poncelet into admitting and accepting the crimes he committed. Near the end of the play, Matt has an epiphany⁹⁷ where he realises and admits the crime.

However, not only does Sister Helen befriend Matt Poncelet but she also accomplishes her role as spiritual advisor. Throughout the process of aiding Matt, Prejean also becomes involved with Matt's family and also with the parents of the victims. Through many months of often very distressing and difficult conversation Prejean becomes familiar with how the crime affected the different families. Poncelet's family must come to terms with his role in the murder and his subsequent death sentence. The Delacroix's, who lost their son Walter, scold Helen for not coming to them to hear their side of the story. They eventually open up to Helen and use her as a tool in the recovery process⁹⁸.

In the film, the concept of restorative justice is explored through the relationship between Sister Helen Prejean, and Poncelet, the convicted murderer she is trying to help. As explained before, throughout the movie, Sister Helen works with Matthew to help him understand the impact of his actions on his victims' families, as well as on his own life. She encourages him to take responsibility for his crimes and seek forgiveness from those he has harmed.

⁹⁶ LEANNA, Mariella., *Dead Man walking and the Rhetoric of an "eye for an eye". A Punishment Out of Public View*. Current Issues in Criminal Justice. pp 324-336. (2018).

⁹⁷ In this context, epiphany is used as a revealing scene or moment.

⁹⁸ VALLO, Skyler., *Torn between forgiveness and hatred. Dead Man Walking*. Study Guide, Birmingham-Southern College.

The film also shows the impact that the restorative justice process has on the victims' families, as they struggle to come to terms with their loss and the idea of forgiveness. Through her work with Matthew and the victims' families, Sister Helen shows how restorative justice can help people find closure and healing, even in the face of tremendous pain and suffering⁹⁹.

Overall, the film portrays restorative justice as a powerful tool for healing and reconciliation, and highlights the importance of taking responsibility for one's actions and seeking forgiveness as a way to move forward and heal from the past.

5.2. Prisonization on Cinema

The concept prisonization is used to describe the process of how individuals adapt to prison culture¹⁰⁰, it was first used by Clemmer (1940) in his classic work *The Prison Community*¹⁰¹. Prisonization is a manifestation of the psychological effect suffered by inmates, caused by the long period of stay in a penitentiary institution. This condition influences their way of life, called prison subculture, as well as their ways of adapting to the formal and informal rules that develop in penal institutions¹⁰².

The phenomenon of prisonization is the process by which a person, as a direct consequence of their stay in prison, assumes, without being aware of it, the code of conduct and values that give content to the prison subculture.¹⁰³ This understanding of the prison phenomenon has been studied mainly on the inmates and the measures and possibilities to adapt to the way of life in prisons. The way of life they adopt is called prison subculture. This way of life is recognised in the codes of conduct (formal or informal rules) which govern the

⁹⁹ BATEY, Robert., *Reflection on the Needle: Poe, Baze, Dead Man Walking*. Valparaiso University Law Review. Vol 44. N°1. (2009).

¹⁰⁰ WANDA LYNN, Bates., *A Phenomenological Examination of Prisonization and the Psychological Effects of Incarceration*. Walden Dissertations and Doctoral Studies. (2018).

¹⁰¹ Clemmer's work is about a lot more than the issue of prisonization. He discusses it in a more nuanced way regarding both its implications and its association with criminalization.

¹⁰² AVILÉS QUEVEDO, Evangelina., *El fenómeno de la prisionalización: complejo penitenciario*. Revista Iberoamericana de las Ciencias Sociales y Humanísticas. Vol 6. N°12. (2017).

¹⁰³ ECHEVERRI VERA, Jaime Alberto., *La prisionalización, sus efectos psicológicos y su evaluación*. Pensando psicología. (2010).

way of life of the inmates in a prison institution. A clear example of the aforementioned code of conduct would be “*snitching*”¹⁰⁴, this is the disclosing to prison authorities, or any other law enforcement official, of any crimes or incidents that may occur either inside or outside of the prison environment¹⁰⁵.

Díaz Padilla states that the process of prisonization facilitates both groups (prison staff and inmates) to engage in subgroups to promote or reinforce their necessity of worth and achievement through a climate of hostility, as a result of which confrontations can culminate in brawls and abuse of authority¹⁰⁶. Such process, according to Clemmer, begins with the sudden loss of status on entering the establishment, which turns the prisoner into nothing, a number, and continues with learning the rank and name of the enforcement officers and experience of the significance of the establishment's functioning¹⁰⁷. Concha Astudillo also argues that during this process, there are also a series of social, psychological and physical transformations that generate instability and a sense of confusion, which has emotional consequences, with deprivation of liberty increasing the feeling of anguish, loneliness, anxiety and fear, with important consequences for subsequent reintegration¹⁰⁸.

It should also be borne in mind that such a process of prisonization has a greater or lesser effect on a person's concept of identity prior to entering prison; it is believed to have an even greater effect on those who have no established concept of identity¹⁰⁹. Moreover, some factors such as education, employment, social contact with people outside of the prison, political, social, and economic attitudes are influences that may determine how an individual will adapt to prison culture¹¹⁰.

¹⁰⁴ A commonly known phrase used as a threat both inside and outside of prison is “snitches get stitches”.

¹⁰⁵ BOXER, Paul; MIDDLEMASS, Keesha & DELORENZO, Thalia., *Exposure to violent crime during incarceration: Effects on psychological adjustment following release*. Criminal Justice and Behaviour. (2009).

¹⁰⁶ DÍAZ PADILLA, Martha Vanesa., *La prisionización y los conflictos en el entorno penitenciario*. Revista de Ciencias Sociales y Humanidades. Vol 6. N°30. (2021).

¹⁰⁷ CLEMMER, Donald., *Observation on Imprisonment as a Source of Criminality*. Journal of Criminal Law and Criminology. Vol 41. Issue 3. (1950).

¹⁰⁸ CONCHA ASTUDILLO, Carla., *Manifestaciones del fenómeno de Prisionización, Prisionización en Adolescentes que se encuentran cumpliendo medida cautelar de Internación Provisoria*. Tesis Pregrado Psicología de la Universidad de Chile, (2017).

¹⁰⁹ LÓPEZ-AGUADO, Patrick., *The Collateral Consequences of Prisonization: Racial Sorting, Carceral Identity, and Community Criminalization*. Sociology Compass. (2016).

¹¹⁰ BATES, Wanda LynnA *Phenomenological Examination of Prizonitation and the Psychological Effects of Incarceration*. Walden Dissertations and Doctoral Studies. (2018).

Greshman says that two primary theories used to explain prisonization are usually compared: deprivation and importation. The deprivation model holds that the prison subculture is one way prisoners cope with the mortification and pain of imprisonment¹¹¹; whereas the importation model asserts that the prison subculture is actually a hybrid of subcultures with roots in the community that inmates bring with them to prison.

In general, it could be said that imprisonment is an adaptive response designed to facilitate life in an unfamiliar environment as well as an acceptance of values and attitudes antagonistic to prison staff and authorities. However, as Walters states, “it is quite possible that it is also an adaptive response that becomes maladaptive once the individual is released from prison”. It is not surprising, therefore, that it bodes ill for future success in the fight against crime after release¹¹².

Prisonization is shown to a direct or indirect extent in all prison-type films, as it is a process that occurs in all prisoners and workers (to a greater or lesser extent). A film that shows both the process of incarceration experienced by both prisoners and prison officials is Frank Darabont’s¹¹³ “*The Green Mile*”.

The film portrays prisonization in a complex and nuanced way. The main character, Paul Edgecomb, is a prison guard on death row who has been working at the prison for many years. He has become accustomed to the routine and hierarchy of the prison system, and his experiences have hardened him to the realities of prison life.

Throughout the film, we see the impact of prisonization on both the guards and the inmates. The guards have developed a sense of camaraderie and loyalty to each other, and they are often callous towards the inmates, treating them with cruelty and disrespect. The inmates, on the other hand, have developed their own codes of conduct and ways of coping with their confinement, often resorting to violence and manipulation to survive.

¹¹¹ GRESHMAN, M. Sykes., *The Society of Captives: A Study of Maximum Security Prisons*. Princeton University Press, Princeton. (2007).

¹¹² WALTERS, Glenn D., *Changes in Criminal Thinking and Identity in Novice and Experienced Inmated: Prisonization Revisited*. Federal Correctional Institution. Vol 30. Issue 4. (2003).

¹¹³ Frank Darabont is not only the director of *The Green Mile*, but also of the film *The Shawshank Redemption* (which will be analysed later in this paper). The connection between them is not only that they were directed by the same director or that they both deal with the development of life in prison, but also that they are both based on stories written by Stephen King.

One of the central themes of the film is the dehumanisation that occurs in a prison system, and how the guards and inmates alike can become trapped in their roles within that system. The character of John Coffey, a death row inmate who possesses mysterious healing powers, represents a challenge to the dehumanising nature of the prison system, and his interactions with the guards and other inmates serve to humanise them and remind them of their own humanity¹¹⁴.

Overall, "*The Green Mile*" portrays prisonization as a complex and multi-faceted issue that affects both the guards and inmates in different ways, and explores the impact of dehumanisation and institutionalisation on human beings.

5.3. Prisoners' reinsertion in Cinema

On the basis of the theories of special prevention¹¹⁵, the reintegration of prisoners is a social right to prevent them from re-offending¹¹⁶. According to these theories, the enforcement of the custodial sentence must be geared towards the resocialization of the convicted person, being understood that the aim is not to isolate the convicted person, but on the contrary to educate and bring him or her back into society in order to prevent a re-offending¹¹⁷. To that end, as Bustos Ramírez claims, this special prevention will be based specifically on the dangerousness of the individual and will be aimed at eliminating it.

Moreover, it must be mentioned that reintegration into society is regarded as a fundamental right, since it consists of prison treatment aimed at the progression of inmates to life in freedom¹¹⁸.

¹¹⁴ SUHARTO, Beni., *Humanism Reflected in Stephen King's The Green Mile Novel: A Sociological Approach*. Board of Examiner School of Teacher Training and Education Muhammadiyah University of Surakarta. (2019).

¹¹⁵ Franz von Liszt is credited with being the driving force behind special prevention. This author argued that the penalty is coercion directed against the will of the offender and provides him with the necessary grounds to deter the offender from committing the offence, while reinforcing the existing ones. Liszt considered punishment as a means of prevention achieved through repression.

¹¹⁶ LÓPEZ MELERO, Montserrat., *Reeducación y reinserción social del recluso (terrorista)*. Anuario de Derecho penal y Ciencias penales. Tomo 72. Fascículo 1. pp 701-729. (2019).

¹¹⁷ BUSTOS RAMÍREZ, Juan José & MALARÉE HORMAZABAL, Hernán., *Nuevo sistema de derecho penal, estructura y procesos*. Trotta Editorial. (2004).

¹¹⁸ LÓPEZ MELERO, Montserrat., *Los derechos fundamentales de los reclusos*. Anuario de Derecho penal y Ciencias penales. Tomo 65. pp 253-304. (2012).

This term is closely linked to that of imprisonment. As mentioned in the last point, these social, psychological and physical changes that create instability and confusion have a major impact on the subsequent reintegration of prisoners, since, in order to adapt to prison conditions¹¹⁹, prisoners develop strategies, learnings and behaviours that are not compatible with the demands of the reintegration facilities¹²⁰. Moreover, it is stated by the Supreme Court¹²¹, that there is a general consensus that an uninterrupted stay in a prison has psychological and social consequences for inmates that make social reintegration impossible¹²².

Prisoner reinsertion is a topic that has been explored in various films. While there is no one definitive way that prisoner re-insertion is portrayed in cinema, there are many films that touch on the subject. In fact, the last pages of this paper will be devoted exclusively to that, to analysing how the prisoner's reintegration is reflected in the following two films: Frank Darabont's *Shawshank Redemption* and Kubrick's *A Clockwork Orange*.

5.3.1. *The Shawshank Redemption*,

The film *The Shawshank Redemption* by Frank Darabont shows very clearly how difficult it is to reintegrate as a result of prisonization.

Set initially in the 1940s, *The Shawshank Redemption* is the story of Andy Dufresne, who is wrongly convicted of the murder of his wife and her lover and sentenced to life imprisonment in Shawshank Penitentiary. For the first three years of his sentence Andy has a tough time surviving, particularly as he becomes the object of attention of a gang of prisoners known as the sisters. However, when the captain of the prison guards and then the prison warden come to discover and benefit from Andy's financial capacity his star in the prison begins to rise. Andy becomes responsible for laundering the money generated by the warden's corrupt scams and in return is allowed to expand the prison library and start a

¹¹⁹ They considered the prison as a "black box" which generates changes in the thinking of inmates and inhibits their reintegration into society. He states that prisoners' dogmas are harmful to themselves and to society, since they inhibit post-prison reintegration.

¹²⁰ MARTÍN, Antonio; ALÒS, Ramon; GIBERT, Francesc; LOBO, Fausto Miguélez., *Política de reinserción en funciones del trabajo en las prisiones, el caso de Cataluña*. Política y sociedad. Vol. 46. Nº 1-2. (2009).

¹²¹ STS 16 de abril de 1998. Número de recurso 1211/1997.

¹²² MENDIETA COLMENERO, Javier., *El efecto de las condenas largas en prisión en Cataluña : Prisionización y Riscanvi*. (2013). <http://hdl.handle.net/10230/20983>

prisoner education scheme. However, when the warden denies Andy an opportunity to prove his innocence (by murdering another inmate) Andy is left with no option but to escape Shawshank¹²³.

Andy requests two items from Red (a longtime inmate at Shawshank who can smuggle anything in). These items are a rock hammer and a poster. Red surmises that “*it would have taken a man just about six hundred years to tunnel under the wall using that rock hammer*”. In fact, it takes just less than 20 years to tunnel through the cell wall. Andy uses the poster to cover up the growing hole in the wall.¹²⁴

Overall, The Shawshank Redemption is the story of Dufresene’s and his inmates prison life, who have to go through the process of prisonization not just to accommodate themselves in the prison but more importantly to liberate themselves from the prison¹²⁵.

In the film is clearly projected the process of prisonization as most of the prisoners at Shawshank are forced to change themselves, to accept their condition as prisoners. They adjust to the constraints of punishment imposed on them. Through the film, Red acknowledges that the granite walls surrounding the prisoners change the people who are kept inside them: “*These walls are funny. First you hate them, then you get used to them. Enough time passes, you get so you depend upon them. They send you here for life; that’s exactly what they take. The part that counts, anyway.*” He even uses the term “*institutionalisation*” to summarise the inability to survive beyond the prison walls, i.e. to reinsert into society¹²⁶.

A clear example of this is the character of Brooks Hatlen (an elderly inmate sentenced for 50 years). Despite the efforts he makes to function in the outside world, the psychological pressure of the prison and the way in which prisoners are affected by prolonged incarceration prevail; actually, during the film Brooks mentions the impossibility he feels of living in the outside world. After serving his 50-year sentence, he ends up

¹²³ O’SULLIVAN, Sean., *Representations of Prison in Nineties Hollywood Cinema: From Con Air to The Shawshank Redemption*. The Howard Journal of Criminal Justice. (2001).

¹²⁴ FIDDLER, Michael., *Projecting the prison: The depiction of the uncanny in The Shawshank Redemption*. Crime, Media, Culture: An International Journal. Vol 3. Issue 2. (2007).

¹²⁵ SANKAR, Hari., *Queering prisonization; revisioning of Darabont’s “The Shawshank Redemption”*. Research Journal of English Language and Literature. (2017).

¹²⁶ MAGISTRALE, Tony., *Hollywood’s Stephen King*. Palgrave Macmillan. (2003).

committing suicide simply because he cannot cope with a world that has changed drastically since his incarceration. Because of it, he had lost the ability to adapt to his increasing levels of speed and anonymity due to the comfortable stagnation he had encountered in prison. Showing clearly what Red referred to as an “*institutionalised man*,” and showing the impossibility of reintegration due to the suffered prisonization.

Brooks' character serves as a cautionary tale of the challenges that can come with prisoner reinsertion, especially for individuals who have spent many years in prison and have become institutionalised. The film shows lack of purpose and direction, combined with a sense of isolation and disconnection from the outside world, ultimately leads to an unsuccessful reintegration of the prisoner. Understanding with this the importance of providing prisoners with necessary support and resources (such as; education and job training programs, as well as social and emotional support) in order to have a successful reintegration in society.

5.3.2. *A Clockwork Orange*

Another film that shows the reinsertion of the prisoner in a direct way is Kubrick's "*A Clockwork Orange*". The background of this film, along with violence, is the socialisation of the individual, in this case the main character of the film, Alex de Large.

Alex is the leader of a violent gang whose main values are rape and ultra-violence. Alex, after raping the wife of a writer in his house and murdering another person, is betrayed by his "drugos" (the term given to the other members of the gang), and is arrested. Once he has been sentenced to a long prison term of 14 years for his acts, he volunteers to try out a new resocialising method called "the Ludovico method", in order to commute his sentence.

This therapy is based on the consumption of certain drugs that will regenerate Alex's spirit and is intended to turn him into an exemplary being fully adapted to society. The State, at the prisoner's voluntary request, transfers him to the Ludovico Medical Guidance Centre where Dr. Bronsky and Dr. Branom will perform a procedure on the criminal. Bronsky and Dr. Branom will apply a procedure to Alex through injections of certain drugs that make him feel bad and make him abhor violence. In short, he feels bad when he observes some violent attitude that appears in films that they make him watch as part of an extreme therapy in which

they put certain devices in his eyes, as well as applying an eye drop that prevents him from closing them, he also has to be aware, against his will, of the images that he coercively observes. In short, through this method, the government tries to eradicate violence through a scientific method; trying to eliminate the delinquent from his free will by turning him into a machine that loses his capacity to make decisions.

The characteristics of this treatment can be related to the panopticon mentioned by Foucault in his book "*Surveillance and Punishment*", in which he relates that before prisons, criminals were subjected to a "laboratory" of techniques to modify their behaviour and in this way re-educate them so that they would not commit crimes again and thus be re-socialised. In this way, more individuals were subjected to a "laboratory" to achieve their recovery and not have to be kept in prisons or need to build more, as the government did not have enough money to continue maintaining and building prisons¹²⁷.

Other aspects of the Law are also projected indirectly in the film, such as positive Law through the priest. Before the resocialising "therapy" begins, there is a scene in which the priest equates crime with sin, as is done in classical Criminal Law, while giving a sermon to the prisoners in the prison. He also points out that those who seek God will find the way to atone for their sins and find absolute redemption¹²⁸.

Undoubtedly, Kubrick proposes through "*A Clockwork Orange*" the "desocialisation" of the offender through long custodial sentences, he proposes a utopian resocialising procedure to be applied and ends his work by indicating that certain criminals cannot be re-educated by these means¹²⁹. Furthermore, he also emphasises the idea that a person who has been physically and psychologically manipulated in such a way that their inherent rights have been violated in areas considered to be intimate cannot be considered to be resocialized¹³⁰. After all, socialisation means nothing more than that the subjects should lead

¹²⁷ MININI, Maximiliano., *La naranja mecánica. Derecho penal y psicoanálisis*. <https://www.academia.edu/45636211/>.

¹²⁸ RÍOS CORBACHO, José Manuel., *La naranja mecánica- Problemas de violencia y resocialización en el siglo XXI*. Tirant lo Blanch. (2021).

¹²⁹ RÍOS CORBACHO, José Manuel., *Los fines de la pena a través del cine: aspectos filosóficos y penales*. Anuario da Facultade de Dereito da Universidade da Coruña. (2011).

¹³⁰ GARCÍA VALDÉS , Carlos; VALMAÑA OCHAITA, Silvia; TÉLLEZ AGUILERA, Abel; FIGUEROA NAVARRO, Maria Carmen; MAESTRE DELGADO, Esteban *Diccionario de ciencias penales: criminología, derecho penal, derecho penitenciario y derecho procesal*. Madrid: Edisofer. (2000).

a life without committing crimes in the future, not that they should adopt the values of a society that they claim to repudiate¹³¹.

6. CONCLUSIONS

Throughout this paper, I have tried to unravel some aspects of the relationship between *Law and Cinema*, as well as to analyse in depth certain aspects of Philosophy of Law and Criminal Law, which may appear so often in different films, but which nevertheless go unnoticed.

Sometimes it is not superfluous to say that a picture is worth a thousand words. The *Law and Cinema* movement is an emerging and complex relationship. In recent years it has been developing more widely, demonstrating that the movement should no longer be seen simply as an area of study, but as a useful tool to be used.

Cinema is a means of communication and therefore it is necessary to interpret its results in order to discover what it wants to communicate. A film is composed of millions of different elements that together form a narrative with the possibility of multiple and varied comments and reflections. Cinema helps to contextualise the Law in the framework of human and social relations in which the legal phenomenon takes place; moreover, it helps to connect us with that reality from a point of view that is not entirely rational, but existential. Legal cinema can help to reflect on Law from different angles or points of view. Precisely because cinema shows reality from fiction or from reality itself, depending on how you look at it, and here lies the magic of films and television, in the power that they unfold to imitate life.

Bearing in mind that cinema is a powerful creator of social representations, it makes clear the capacity it has to influence people's opinions and to create debate in the public sphere. Moreover, today it is undeniable that Cinema has the power to shape social perceptions of Law, indeed it is the main source of knowledge from which non-lawyers acquire most of their legal notions. The increase in the production of films and series dealing with Criminal Law issues, indicate both the vast and seemingly insatiable interest the general

¹³¹ BARRANCO AVILÉS, Maria del Carmen., *La teoría jurídica de los derechos fundamentales*, Dykinson, Madrid, (2000).

population has in crime and criminals, and the key role the media plays in portraying and describing all aspects of criminal behaviour. And the knowledge and understanding the public have about crime and criminals is largely based on what they have seen or heard through these various media forms.

This is why it is imperative for cinema to show an authoritative version of the legal present; however the spectators must also be aware of the context, culture and time of the film. If the viewers assume the legal content as their own, they will commit a serious mistake as they will immerse themselves into confusion. A clear example of this, has been already mentioned throughout the paper, most legal films are of North American origin, and this implies that all the norms and rules that the viewer witnesses belong to this legal world, also known as *Common Law*. Due to this, if the viewers are not aware of this fact, they are assuming information that is not applicable to their reality.

It is a fact that citizens who have not obtained legal education feel totally alienated from the judicial world, perhaps because it has been created only to be understood by people who are knowledgeable about it. This is why the *Law and Cinema* movement has become even more relevant, and the fact that it has become the main source of legal education is something that should be preserved and encouraged. However, films can also be used to educate and encourage people who are already studying Law. If an integral legal education is wanted, it is reasonable to require law students to learn not only about treaties and laws, but also about "non-legal" materials, including films.

It is worth mentioning that film not only brings Law closer to society, but also vice versa, it brings society closer to Law, as film can reflect cultural views of the Law. Films do not only reflect legal facts, but also cultural perceptions of Law and legal systems. This is where cinema could play a fundamental role. Cinema plays an important role in cultural promotion and training, and can also become a fundamental instrument for understanding the workings of Justice. And the truth is that through a film, the public could be allowed to approach in a didactic way and with an understandable language, a world as unknown and complex as the Justice system. This is why the interpretation and analysis of cinema from a legal perspective is an opportunity to gain a better understanding of the cultural values and perceptions associated with justice.

On the other hand, it is not only the conceptual or thematic aspects that can be approached from the analysis of films with legal content, but also from a screening of well-selected films that gives the chance to build critical attitudes and common social objectives. It is worth mentioning that cinema allows the transmission of certain principles that must preside over the work of the jurist and even the society as a whole.

Although only films that deal with procedural, Criminal or Civil Law are considered to be legal films. Law can be dealt with differently in films, basically because one of its objectives is fairness and the search for a society with more just and equitable values. In this sense, film can also promote social justice. Films can and should be used as a tool to promote values. For example, an increasing number of films address human rights, racial justice and other important societal issues, which helps to raise awareness and educate people about these topics.

Finally, I also believe that cinema contributes to overthrowing an excessively rationalistic view of the Law, which can even lead to it being considered cold and mechanical. This is why the fact that more and more artistic fields, such as cinema in this case, decide to use the Law to create art, not only makes Law more accessible to all audiences, but also makes it more human and exciting, and less abstract and intimidating.

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Films mentioned in order of appearance

<u>Film</u>	<u>Director</u>	<u>Year</u>
<i>A Few Good Men</i>	Rob Reiner	1992
<i>The Man Who Shot Liberty Valance</i>	John Ford	1962
<i>The Wrong Man</i>	Alfred Hitchcock	1986
<i>Sophie Scholl. The Last Days</i>	Marc Rothemund	2005
<i>The Rite</i>	Ingmar Bergman	1969
<i>Witness for the Prosecution</i>	Billy Wilder	1957
<i>Midnight Express</i>	Alan Parker	1978
<i>In the Name of Father.</i>	Jim Sheridan	1993
<i>Just Mercy</i>	Destin Cretton	2019
<i>To Kill a Mockingbird</i>	Robert Mulligan	1962
<i>Minority Report</i>	Steven Spielberg	2002
<i>Thou Shalt Not Kill</i>	Josh Becker	2014
<i>Dead Man Walking</i>	Tim Robbins	1995
<i>The Green Mile</i>	Frank Darabont	1999
<i>The Shawshank Redemption</i>	Frank Darabont	1994
<i>A Clockwork Orange</i>	Stanley Kubrick	1971