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Film as a Legal Pedagogical Tool

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Summary

This piece explores the place of film in legal pedagogy, examining the use of '12 Angry Men' in teaching the Law of Evidence. I argue that the immersive quality of the film provides a medium well-suited to contextualising this subject; that it fosters a sense of the human frailty at the heart of one of the criminal law's central institutions: the trial by jury.

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The Medium of Film in Legal Education

The law has proven to be a fertile cinematic theme; from the depiction of a class action resulting from breaches of environmental regulations in 'Erin Brockovich' (Soderbergh, 1999) to questioning the death penalty and miscarriages of justice in 'Let Him Have It' (Medak, 1991), films have dealt with a plethora of legal issues. Many of these invoke the role and function of law and the legal process; others go beyond this and concentrate on wider issues related to law and justice. As such, cinema can provide a wealth of source material, both for use in legal education and as a subject for research in legal academia. Although still a nascent area of practice and enquiry in many jurisdictions, the inter-disciplinary study of Law and Film is prevalent in the US and has recently gained some traction in the UK, with the arrival of a number of studies and academic texts, and a rising profile in some of the country's Law Schools. My own institution, the University of Sunderland, has for some years run an extra-curricular 'Law on Film' group, which convenes throughout the academic year to watch films that have legal themes, and to discuss issues arising from these. Examples of the films used for this purpose have included such disparate titles as 'Over the Hedge' (Johnson & Kirkpatrick, 2006) and 'Fight Club' (Fincher, 1999).

The 'Law and Film' movement goes much beyond the use of film purely as a pedagogical device; Greenfield et al. (2001, p.6) suggest that it would be a 'tragic waste' to confine legal films to the narrow role of another sort of traditional legal teaching material. That said, it is not the aim of this article to explore in depth the scholastic 'Law and Film' movement, and the very persuasive case for its acceptance as a substantive and discrete area of study in and of itself, arguments for which are made by, amongst others, leading UK-based proponents such as Steve Greenfield, Stefan Machura, Guy Osborn and Peter Robson. Rather, I aim to give a specific instance of the way in which the use of film can promote learning in the study of law, exploring and evaluating the pedagogical utility of one film ('12 Angry Men' (Lumet, 1957)) in the teaching of one subject (the Law of Evidence, taught to a mixed cohort of second- and third-year students, as optional modules on the LL.B degree at the University of Sunderland). In this setting, the film can be used to introduce and to contextualise facets of the system of jury trial, a cornerstone of Anglo-American criminal legal process and the concept around which much of the Law of Evidence is constructed.

A proponent of the value that can be found in connecting Law and Film, Black asserts that film can be 'a tool for gaining access to important legal issues' (1999, p.133); its use also goes beyond the purely introductory. As I will seek to convey, '12 Angry Men' can serve as a reference point throughout the study of the Law of Evidence. For example, where issues arise as to the admissibility of 'bad character'

(evidence of the reputation, disposition or previous conduct of a defendant or witness, used to discredit their testimony, or to show the propensity of someone to behave in a particular way), the film serves to demonstrate the potential prejudicial effect that such evidence can have on the jury; where the issue is eyewitness testimony, the film serves to illustrate the possibility of error, and the need for caution on the part of the jury. The danger of eyewitness testimony is explicitly demarcated in the *Turnbull* directions that a judge should give where eyewitness testimony is a key part of the evidence (*R v Turnbull* [1977] QB 224); in the film, doubt is cast upon the testimony of one of the witnesses because it is thought unlikely that she would have been wearing her glasses when she witnessed the alleged crime.

In examining and reflecting upon the rationale for the use of film in the delivery of legal education, I will seek to argue that its adoption as a pedagogical tool has distinct advantages in helping students to understand fundamental concepts, and to think critically about the law. As Ashford notes, the medium has the capacity to 'inspire, motivate and inform'; beyond this, the issues raised in and by film can be transferred 'into a broader understanding of the law [the students] study and the wider context in which law is constructed and operates' (Ashford, 2005).

12 Angry Men

Sidney Lumet's '12 Angry Men', widely regarded as a cinematic masterpiece, is set in the jury room of the Manhattan court in 1927 (Kaye, 2007), during a murder case in which a young, Puerto Rican man is implicated in the death of his father. The film is rare amongst those that have a tangible link with law and the legal process, in that it revolves around the deliberations of the jury. Few films, even those that could be categorised as 'courtroom dramas', cast the judicial decision-maker (be that judge or jury) in a central role, preferring instead to concentrate on agencies of law enforcement and investigation, or on lawyers (see Clover, 1998). Within this paradigm the investigator or lawyer is cast as hero in the mould of Atticus Finch in 'To Kill a Mockingbird' (Mulligan, 1962) or villain as, for example, in the role played by Al Pacino in 'The Devil's Advocate' (Hackford, 1997); the audience is invited to take the adjudicative role.

Immersed in the jury room deliberations which form the majority of '12 Angry Men', the view of the (student) audience develops alongside that of the fictional jury. The film does not show the trial of the young man whose fate stands to be decided; the viewer does not witness the speeches of the advocates, nor the testimony of those witnesses called to testify. Instead, the film opens with the exaggeratedly uninterested judge giving directions to the jury. The audience is introduced to the evidence only as the jury is asked to re-consider it in the deliberation room; concurrently, both student and jury member must de-code and assess the problematic information, weighing the alternative, and competing, narratives provided by the different perspectives the respective jurors bring to bear on often-incomplete information. During the course of the film, the voice of

conscience comes from Henry Fonda's character Davis (juror number eight), whose scrupulous and thoughtful presence stands in stark contrast to the dysfunctional attitudes and reasoning of his fellow jury members. As the film unfolds, the prejudices and intellectual frailties of those charged with deciding are explored, and some of the attendant vagaries of the jury system laid bare.

Methodology: How the film was used in the module

'12 Angry Men' was screened towards the beginning of the course, during the formative, introductory stage, and before commencing study of more complex, substantive matters. Following the film and discussion of the issues raised by it, a short questionnaire was distributed, which contained the following questions:

- Did you enjoy the film?
- Did you understand the reasons for showing the film in the module?
- Has watching the film helped you to understand issues in the Law of Evidence?
- If so, what and how?

The questionnaire was re-issued at the end of the module, with one additional question: 'Do you think the film should be shown to next year's students?'

The surveys had a dual function: to help me in assessing the efficacy of the screening for future use, and to encourage thought amongst the students as to the possible value of what they had watched to their study and understanding of the Law of Evidence. There is no attempt to assert any sort of scientific validity arising from either of the surveys undertaken; a relatively small cohort of 35 students watched the film and the questionnaire was completed at the end of teaching sessions, whilst I was still present. However, it was anticipated that the answers would provide some indication of the pedagogical value of the film, and that completion of the questionnaires would encourage reflection on the part of the students.

The rationale for the particular questions asked was relatively straightforward, and largely self-evident. The first three questions necessitated a 'yes/no' response, and the answer, across all surveys completed, was unanimously 'yes' on all counts. This was also true of the additional question asked in the second questionnaire. The answers tended to confirm that the students enjoyed the film. Although enjoyment may be considered peripheral to the pedagogical justifications for inclusion of the film, it is propitious insofar as it facilitates engagement with the subject matter. It is to no detriment that the film is enjoyable, and thought-provoking, in its own right; it demands no particular interests in the more arcane aspects of the Law of Evidence in order to enjoy it. The responses to the second and third questions gave an indication that the exercise of watching '12 Angry Men' had proven useful and that the students understood the reason for watching the film.

The fourth, open question ('If so, what and how?') prompted the students to reflect on the issues brought out in the film, and to relate them to the course material. In the instance of the questionnaire issued early on in the course, this was meant to encourage reflection on the limited material already covered, and to draw attention to the film as a reference point for future study. Given the relatively early stage at which they were, it was interesting to note that the students were able to refer the film to the material covered, and relate it to problematic concepts. Responses to the question encompassed a range of areas, indicating an appreciation of the way in which the evidence must be adduced in the adversarial trial setting, ambiguities in communication within the trial process ('It helped me to see that the point does not always get across in court'; 'how misconstrued and unreliable evidence can be'), and potential deficiencies in people's reasoning powers ('how weak and absent-minded people can be'; 'how jurors can give more or less weight to evidence depending on personal beliefs')

When this same question was asked at the end of the module, the responses were similar in some respects, but pointed to a development in the students' critical appreciation of the subject, and a greater ability to relate that understanding to the film. Perhaps unsurprising but nevertheless encouraging, this greater sophistication can be seen in the following responses: 'It showed that despite what evidence (or lack of) is presented in the courtroom, the jury will always have their own opinion on the matter and this prejudice is likely to be encountered both in the jury room and throughout the evidence-gathering process'; 'That the admissibility of evidence is influenced by the different ways individuals might view it'. Somewhat cynically, more than one student simply wrote: 'the jury cannot be trusted'. When asked whether they would recommend the use of the film for future cohorts, there was unanimous approval. One student wrote: '...it provides an informative introduction ... which can be linked back to when issues arise during the course'. Another wrote simply: 'I think it should as I enjoyed and took a lot from the film'.

The Film Within the Module

The Law of Evidence module at the University of Sunderland takes as its focus the jury trial. This is not unusual in the study of the subject; despite the fact that civil disputes outweigh criminal in frequency, and that criminal trials overwhelmingly take place in the magistrates' court, the concept of jury trial is central to most writings. The American scholar Thayer wrote in the late nineteenth-century of the Law of Evidence as 'the child of the jury system' (1898, p.266), and it is largely from this base that the law has developed; Murphy asserts that 'no major rule of evidence has developed without unmistakable signs of tailoring to the supposed needs of juries.' (p.10). It was noted above that few films are made about juries or jurors, insofar as they play any active role in the story. However, cinema mirrors the prevailing practice in legal education, in that the majority of films which depict the criminal process use the trial by jury as a setting. Just as the jury trial provides the most academically interesting and challenging context for the study of the rules

of evidence, so it can serve as a dramaturgical tool, with the members of the jury serving vicariously as the audience to whom the advocates tell their story.

'12 Angry Men' promotes the importance and centrality of evidential rules within the criminal process, largely through Davis's insistence on a scrupulous examination of the facts of the case, and adherence to judicial principles. The burden and standard of proof in particular gain an almost heroic aspect, with Fonda's repeated insistence that the version of events posited by the defence is 'possible', however seemingly unlikely. In this regard, the juror characters in the film make mistakes of law similar to those that are regularly made by students of the Law of Evidence. Asked why he believes in the guilt of the accused, juror number two states: 'I just think he's guilty. I thought it was obvious from the word go. I mean, nobody proved otherwise.' To this, Davis retorts: 'He doesn't have to. The burden of proof is on the prosecution. The defendant doesn't even have to open his mouth'. During a seminar dedicated to the burden of proof, this exchange forms a good introduction to the evidential requirements which must be met before there can be a conviction. The explanation proffered by Davis leads naturally to a discussion of the 'golden thread' speech made by Viscount Sankey LC in *Woolmington v DPP* [1935] AC 462, at 481-2: 'Throughout the web of the English criminal law one golden thread is always to be seen, that is the duty of the prosecution to prove the prisoner's guilt....' From this flows a more involved and detailed discussion of the burden and standard of proof, a deceptively complex area of law.

As noted above, there are numerous other substantive issues that are directly illustrated in the film, such as the debilitating effect of prejudice upon the perceptions and decision-making of jurors. Such matters can of course be introduced and examined through more conventional pedagogical means. However, the film allows for the presentation of issues as the concerns of believable characters, and provides a plausible context that can form the basis for coherent and sustained critical debate. The use of the film goes beyond the purely literally demonstrative, and can lead the students to consider the dynamics of the court and jury room, allowing them access to a critical understanding of the rationale for the rules they encounter throughout their study.

The utilitarian jurist Jeremy Bentham believed that there was little need for restrictive rules of evidence (Bentham, 1827); that the information should be presented, unadulterated and uncensored in the manner of scientific enquiry, to the jury for appraisal. However, this is far from the *status quo* under the current regime, and against Bentham's position are counter-posed the traditional policy concerns of those charged with ensuring the fairness of the trial process, evident in the often-complex edifice that has been constructed in order to obviate the perceived inadequacies and defects in reasoning on the part of the jury. Acknowledging that the rules of evidence have grown up from the particular problems that the jury trial poses, the aim of the formative weeks of the module is to equip the students with an insight into these. In order to do this, students must arrive at a critical understanding and appreciation of the dynamics of the jury trial.

To this end, '12 Angry Men' serves to illustrate the very human traits manifest in juries, and the confusion in the minds of the fictional jurors also introduces and highlights some of the problematic concepts within the substantive law.

Although the majority of students have, by their second year, experienced the conduct of a case in court, it is unlikely that they will have sat through a whole Crown Court trial; unless they have done jury service, they will certainly not have witnessed the secret deliberations of the jury. Yet the study of the Law of Evidence, as is the case with many academic legal subjects, benefits enormously from an understanding of the law in context, both within the court setting and as part of wider societal concerns. Notwithstanding the fictionality, age and overseas setting of the film, '12 Angry Men' humanises the essence of trial by jury, illuminating its difficulties and drawing attention to the rationale for the restrictive measures of evidential rules. As such, issues brought up in the film can act as a catalyst for exploring the difficulties faced by a jury appraising evidence, and the possible prejudice (all too evident in the attitudes of the film's characters) that can be brought to bear. Thus, and somewhat ironically for a work of fiction, the film helps to bridge the gap between theory and some of the realities of legal practice.

Film as Immersive Narrative: Synergies with the narrative form in legal pedagogy

'In the courtroom, whoever tells the best story wins', states John Quincy Adams in the film 'Amistad' (Spielberg, 1997, cited in Greenfield et al. 2001, p.55). As it has its place in practice, central to the judicial process, so the narrative is often used in the study of law; instruction and assessment are routinely based around fictional set-pieces, in which the student is expected to apply the mechanisms of the particular area of law to a given scenario. Textbooks also use this technique; in 'Murphy on Evidence' (a leading textbook, now in its 11th edition), the reader is asked to follow the fictional Coke and Littleton through their respective trials for rape and sexual assault (Murphy, 2009). '12 Angry Men' can be employed to the same ends, with the student asked to discern the potential evidential difficulties that arise within the narrative. As such, it can be used as one would use a case study of the type that is ubiquitous in the study of law. In some ways, however, the film is more effective. In particular, it works because it is immersive, and because it is visual; 'Lumet and his actors don't just tell us [what juries can and often do]; they show us ... Lumet captures an almost intangible reality' (Landsman, 2007, p.758). As the questionnaire answers indicate, the presentation of the material is accessible and enjoyable; the medium engages the imagination and critical faculties of the viewer.

The restrictive rules of evidence manifest distrust of the human decision-maker when confronted with the disparate narratives propounded by the prosecution and defence. In the model of the Crown Court criminal trial that forms the focus of the module at the University of Sunderland, the Law of Evidence serves as a framework the judge can use in order to filter out that information deemed

unsuitable for the attention of the jury. Thus, the law is concerned with the regulation of the way in which the conflicting stories of prosecution and defendant come before the court. The role of the fact-finder (the jury in the case of '12 Angry Men') is to decide between competing, alternative narratives; the narrative structure of film is an apposite and convenient means by which to explore this.

Notwithstanding its utility in this role, it should be noted that the film was not intended as a teaching tool, and it is important that the students do not take it to be an authentic representation of the current law of England and Wales. The film is American and over half-a-century old, and this means that there are discrepancies between the depicted procedure and that of present-day England and Wales. However, as Marder notes, 'even if the fictional deliberation does not and should not replicate an actual jury deliberation, it can be a catalyst for thinking about the ... jury system, and how well it works or does not work' (2007, p.564). One of the most valuable aspects of the film survives any factual disparities almost entirely intact, and that is the dramatisation of the decision-making process, which is conceptually central to an understanding of the rationale for the rules which prevail in the Law of Evidence (Kaye, 2007). As such, use of the film befits a multiplicity of teaching approaches (for example, doctrinal, practical, theoretical, socio-legal); here, the limited extent to which a mainstream film wants to engage in the more arcane rules is actually somewhat convenient, as disparities in the substantive law would have the capacity to confuse the student viewer.

Conclusion

If we choose to accept its utility, film constitutes a valuable legal academic resource. '12 Angry Men' can serve as an effective pedagogical tool for those teaching and studying the Law of Evidence. In exploring the dynamics of the jury trial, it provokes critical debate and paves the way for issues covered within the course. With an appreciation of the very human nature of the jury, around which the rules are constructed, the substantive law is both more accessible and better contextualised; the narrative structure of film is a mechanism by which this can be achieved. The student response to its use has been overwhelmingly positive. Notwithstanding the relatively unscientific nature of the surveys detailed above, it is maintained that their findings have value, and they are borne out by what I perceive to be an improved understanding of the nature and effect of the trial by jury in relation to the Law of Evidence. The utility of the film is also supported by anecdotal evidence arising from discussions amongst and with the students since watching '12 Angry Men', which tend to assert its worth as a teaching tool, as an introduction and a reference point throughout the course. As Ashford notes, the narrative and dialogue of film has the power to make 'a difficult concept straightforward in a way that ... academic explanations [can fail to]' (Ashford, 2005).

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