A History of Representations of Justice: Coincident Preoccupations of Law and Film

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Representations of Justice
Contents

Preface ......................................................................................................................... 9
   Kevin O'Connor

List of Figures and Tables .................................................................................. 13

Introduction to the Interactions between Law and Representation of Justice ... 15
   Antoine Masson

PART I
LAW, POPULAR CULTURE AND REPRESENTATION OF JUSTICE

 Allegory of Justice and Representation of Punishment in Crime Fiction. A Franco-Irish Comparison ........................................................................................................... 23
   Dominique Jeannerod

 The Administration of Justice as Portrayed in Le Charivari and Le Journal Amusant at the End of the 19th Century.
   Scepticism and Derision .................................................................................. 39
   Solange Vernois

 Decoding Justice. Intellectual Discourse and the Trial of the Malagasy Deputies ................................................................. 59
   Mairéad Ní Bhriain

 Developments in Law and Popular Culture.
   The Case of the TV Lawyer ........................................................................ 75
   Peter Robson

 The Portrayal of the Judicial Process in the French and Irish Media ........ 95
   Pascale Duparc Portier and Laurent Pech

 Portrayal of Justice on German Television .................................................. 115
   Ruth Herz

 A History of Representations of Justice, Coincident Preoccupations of Law and Film .................................................. 131
   Jessica Silbey
PART II
JUSTICE IN ACTION: REPRESENTATION AND REFLECTION

Representation of the Legal Profession on Television. Professional Ethics and Client Expectations
Barbara Villez ............................................. 155

Talk of Law. Contested and Conventional Legality
Susan S. Silbey ............................................. 173

From ‘Rites’ to ‘Rights’ of Audience. The Utilities and
Contingencies of the Public’s Role in Court-Based Processes
Judith Resnik and Dennis E. Curtis ............................................. 195

Representation of the European Court of Justice. Conscience
of the People of Europe or Political Juggernaut?
Claire Micheau and Alexander Conrad Culley ............................................. 237

Deconstructing ‘Justice’ and Reconstructing ‘Fairness’
in a Convergent European Justice System. An Aristotelian
Approach to the Question of Representation of Justice
in Europe
Theo Gavrielides ............................................. 249

PART III
ECONOMICS PERSPECTIVES OF REPRESENTATION OF JUSTICE

Representation of Justice in Law and Economics
Bruno Deffains and Samuel Ferey ............................................. 271

Representation of Justice and Companies Judicial
Strategies in France
Didier Danet ............................................. 289

Representations of Justice in Economic Comparisons
of Legal Systems
Thierry Kirat ............................................. 307

Cross Representations of Law and Economics
in Corporate Governance Approach
Tristan Boyer ............................................. 325

Index ............................................. 335

Personalia ............................................. 341
A History of Representations of Justice
Coincident Preoccupations of Law and Film

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The American trial and the art of cinema share certain epistemological tendencies. Both stake claims to an authoritative form of knowledge based on the indubitable quality of observable phenomena. Both are preoccupied (sometimes to the point of self-defeat) with sustaining the authority that underlies the knowledge produced by visual perception. The American trial and art of cinema also increasingly share cultural space. Although the trial film (otherwise known as the courtroom drama) is as old as the medium of film, the recent spate of popular trial films, be they fictional such as Runaway Jury or documentary such as Capturing the Friedmans, suggests more than a trend; it suggests an

2. Carol Clover has suggested that the first trial film - what she calls the courtroom drama - was released to audiences in 1906. See infra discussion of Falsely Accused! Clover, C., ‘God Bless Juries’, in N. Browne, Refiguring American Film Genres, University of California Press, 1998, p. 259.
inherent affinity between law and film. This article investigates this affinity, the cultural space it inhabits, and its destiny in terms of the evolving filmic culture and technologies of the 21st century.

The novelty that cinema brought to its audiences was its moving image quality, the significance of which is rooted in the ideological and yet overdetermined relationship between the image seen on film and the event that was filmed. From its beginnings in 1894, cinema generally (and the trial film specifically) were preoccupied with what it means to know through sight, with the relation between witnessing an event and judging its truthfulness and authenticity. The by-now mythic story of film’s birth begins on 28th December 1895, during a showing of Auguste and Louis Lumière’s *L’Arrivée d’un Train en Gare* – a short film of a train arriving into a station. The film camera was positioned on the quay such that on screen the train grew larger and larger as it entered the station. Apparently, when the film audience saw the train coming toward them, unaccustomed to the illusion of reality that film creates, the audience members feared for their lives and ran from the theater. This, the story continues, inaugurated the notion that film creates a particularly persuasive reality, producing in the audience the experience of bearing witness to some real event on screen.

At the same time as cinema was persuading its audiences of the authenticity of the event on screen, cinematic masters were developing a film language, the basis of which undermined the very possibility of truthful representation. Film, these masters taught, constructs a world and experience by exposing its story-telling mechanisms that play on the hermeneutics of seeing and believing. The power and influence of film’s language derives from its self-reflexive, often self-critical, qualities. The quintessential early example is Georges Méliès’ 1903 film *The Magic Lantern*, a story on film about how film tells stories. *The Magic Lantern* purports to tell the history of Western dramatic art, showing first a landscape painting, then a play, and then an image of the newly developed moving pictures. Film *à la Méliès* is simply the next step in the evolution of cultural (and largely fictional) forms. But by exposing the audience to the film’s own ways of worldmaking and thereby involving the audience in the illusions created, Méliès also showed how film’s self-reflexive qualities are central to its authoritative claim. Méliès’ point was to show how film does not reveal the world, but constructs it. By exposing the ways in which cinema is just another form of storytel-

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ling, the film's self-critique also empowers the audience to judge the story being told, to stand apart from the film and question the images it projects. Presented with the story as told on film that incorporates a critical perspective on the illusion that film creates, the audience is empowered to judge the film version as credible and inescapable nonetheless. The result in the case of *The Magic Lantern* is that the place of film in the history of dramatic art appears preordained.

Cinema's play on the hermeneutics of seeing and believing and its self-reflective tendencies raise questions of the epistemic foundations of filmic representation. One might ask these same questions of law and its processes as regards the relationship between evidence and judgment. As with film, the trial process is based on the believability of observable phenomena, on seeing, bearing witness and judging. Much like stories told on film, the story that evolves in a courtroom and through the evidentiary process is emboldened with the privileged status of truth because of its basis in observation and the integrity of the testifying witness. And yet, like film language, legal processes are self-reflective and recursive in nature; by reflecting on the possibility of multiple and conflicting stories (the essence of the trial) and asking jurors to judge those stories, or by exposing legal judgments to appeal and citing those judgments as precedents, law exposes its own story-telling mechanism and reflects on the impossibility of certain, stable knowledge and impartial judgements. Law nevertheless concludes with judgment that is both authoritative and (most often) backed by popular belief. In this way, as with film, the legal trial sustains the knowledge it produces (the 'knowledge' of guilt or innocence, for example) with the authority of self-critique such that the trial's outcome (as with the filmic version) is often perceived as the most persuasive account of 'what happened'. This paper situates this phenomenon - the shared preoccupations of legal and filmic authority - in light of a history of law and justice as represented in the American trial film genre.

The history that follows traces the development of the American trial film genre (the courtroom drama) from cinema's inception in 1894 to the present. It shows how this genre, distinctly stories of law, matured into a genre along side and in conjunction with the developing mechanisms of film and the phenomena of spectatorship. The history will also show how this early genre of film was preoccupied with what it means to know through sight (visual evidence) and with the relation between witnessing and judging (watching film and making a claim to know what you see). These early preoccupations and questions of epistemology (both legal and filmic) were embedded in and shaped theories of
film and filmmaking from its early stages. This history will also describe in greater detail the irony of filmic and legal representations being perceived as both definitive accounts of true stories and self-critiques of the possibility of certain knowledge.

Discussions of law and popular culture can take as their object any myriad of legal subjects and popular cultural objects. The history that follows is only about representations in film of the American trial – courtroom battles being the ubiquitous symbol of law and justice in popular culture and film being a pervasive cultural medium that, alongside its institutional growth, has matured a sustained intellectual critique. Moreover, an analysis of film must be in terms of what makes film different from other popular cultural forms: its distinct way of making meaning as a primarily visual phenomenon whose significance is garnered in substantial part by the ideological and yet overdetermined relationship between the editing of filmed images on film with the event filmed. The filmic experience of seeing and being seen (the primary filmic semiotic), and the world and community that visual experience constructs (its epistemologies, politics, and a legal order) remain the grounding for the following analysis of filmic ‘representations of justice’.

I. In the Beginning Was Skepticism and Play...

Film is said to have been born in 1894 in France, with the Lumière brothers’ actuality film L’Arrivée d’un Train en Gare and its frightened audience. [Photo 1] Despite the aborted viewing of the film, with this film the French film empire was off and running. So, too, was the notion that film has a peculiarly ‘real’ feel, enabling the audience to feel as though they are bearing witness to some event projected on screen.

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9 One conclusion to be drawn from the history of the trial film genre that follows is that the legal trial is particularly well-suited to representation in and through film because the trial film genre shares with the more general strategies of film and of law an authority that is grounded in the individual viewer whose claim to know and judge the world is based on self-consciousness or self-reflexivity. J. Silbey, ‘Patterns of Courtroom Justice’, *Journal of Law and Society*, Vol. 28, No. 1, Blackwell Publishers, 2001, p. 98 (describing this viewer subject as the ‘liberal legal subject of trial films’).


The actuality films of the Lumière brothers are as close to a representation of ‘things as they are’, or what I have elsewhere called ‘évidence vérité’, as one might find in the history of film.\textsuperscript{12} As film scholar Bill Nichols has written, the Lumière brothers’ films are but a single shot and last but a few minutes, [but] they seem to provide a window onto the historical world […]. The departing workers in Workers Leaving the Lumière Factory, for example, walk out of the factory and past the camera for us to see as if we were there, watching this specific moment from the past take place all over again.\textsuperscript{13}

And so, in the beginning, moving pictures (‘the movies’) were a marvel because of their apparently unique relationship to reality. Film’s so-called mythic capacity for total worldmaking began with what has become the basic premise of film’s unique language: the ontological bond between the filmic representation and the thing or event filmed. This indexical linkage gave rise to theories suggesting that film appears to ‘bear […] unimpeachable witness to ‘things as they are”.\textsuperscript{14} However, as even the Lumière brothers understood, a ‘sense of photographic realism, of revealing what life has to offer when it is filmed simply and truly, is not, in fact a truth but a style. It is an effect achieved by using

\textsuperscript{12} As I have defined it, ‘évidence vérité’ is a kind of film evidence, such as filmed interrogations or surveillance footage, ‘that purports to be unmediated and self-conscious film footage of actual events’. J. Silbey, ‘Judges as Film Critics: New Approaches to Filmic Evidence’, in Columbia Journal of Law and the Arts, Vol. 29, No. 2, Columbia University School of Law, p. 507.

\textsuperscript{13} Ibid.

\textsuperscript{14} R. Stam et al., New Vocabularies in Film Semiotics: Structuralism, Post-Structuralism and Beyond, Routledge, 1992, p. 185.
specific but unassuming, definite but self-effacing means'. And so the reality that early film presented to its audience was an imagined one, one intentionally conjured by the film (and filmmaker) to project onto and reproduce in its viewing audience a specific rendering of how ‘reality’ might look and feel.

Around 1902, the actuality film genre (of which the Lumière brothers were the innovators) found narrative. With narrative, whatever ‘reality’ was contained in the actuality film was replaced with overt fantasy. The quintessential example of the transitional film genre is Georges Méliès’ early film *A Trip to the Moon*. [Photo 2] Méliès’ films looked like staged plays, the camera passive while actors run on and off stage and puppeteers move props and scenes with invisible wires. The unsophisticated frame composition hid a more complex story, however, involving the audience in its telling, and by consequence, involving them in the new art of cinema.

Photo 2: ‘Trip to the Moon’, Georges Méliès, 1902.

A History of Representations of Justice

For example, Méliès' 1903 film *The Magic Lantern* is the first film of a film, telling the history of Western dramatic art, showing first a landscape painting, then a play, and then an image of the newly developed moving pictures. Self-reflexivity in film – drawing the audience into the film's storytelling – was born here. By placing film in the trajectory of Western representational art, Méliès' film says that film art is no more or less faithful to its subject than painting. It also piques spectators' attention, drawing them out of the passive experience of the spectacle and into a more active role of contributing to the meaning of the film. To recognize that the film they are watching is just one representational scheme among others is to acknowledge their complicity in the perpetuation of the illusion of film's omniscience and their participation in the film's popular and personal meaning. With Méliès, it became a common practice in early films to tell stories about telling stories through pictures. Although now a ubiquitous and varied featured of cinema – think of more recent films like *Adaptation*,16 or classic films like *Rear Window*17 – film's early self-reflexive tendencies were considered another way of commenting on its illusionism, of providing another mode of resistance to what André Bazin later dubbed the 'myth of total cinema'.18 Moreover, this self reflexivity – a recognition of the individual's presence beyond the representational schema but integral to the meaning of that representation – is one feature that makes law and film, and their ways of knowing and judging the world, so compatible. It is, for example, how audience members might experience films as jurors might experience trials, isolated and apart from the storytelling spectacle on screen or in court but also acutely aware of their integral role in the justification for both the film and the law's power in society.

16 *Adaptation* (Dir. Spike Jonze, 2002).

Also in 1903 (but on the other side of the ocean), Edwin Porter made his famous film, The Great Train Robbery.¹⁹ [Photo 3] The Great Train Robbery is credited as the first pseudo-documentary, its narrative subject: 'how to rob a train.'²⁰ With the popularity of this film came the fears and hopes – that have not abated today – that film is the most effective teaching tool, encouraging both the perpetuation of crimes and the beneficial participation in civic society. Its effectiveness comes from its unique persuasiveness. Film, especially documentary film, appears to show its audience how a moment in history actually unfolded. Like the courtroom trial that recreates competing stories for the best and most persuasive one to emerge as the 'truth', narrative film convinces its audience through their participation in and their acceptance of the story's climax, that the story being told makes true sense.

Ironically, The Great Train Robbery's other contribution to film is its innovative editing structure that would become a film mainstay. In addition to its documentary-like feel, The Great Train Robbery also pioneered relational editing in film: juxtaposing shots of otherwise discontinuous images to create narrative logic where none existed before. With its reliance on the spectator's contribution to narrative continuity, relational editing would become one staple for film meaning made even more famous with Porter's contemporaries, D.W. Griffith and Sergei Eisenstein.

Griffith developed film rhetoric through consistent uses of, among others, the close-up, flashback, deep focus, long shot and pan shot. He discovered that

'[f]ilms could recreate the activities of the mind [...] [and] had come to realize ... the importance of the interplay between events presented on the screen and the spectator's mental synthesis of those events. Griffith's 'discovery' was far more than mere technique [...] it was the way to make film narrative, storytelling with moving images, consistently coherent.'²¹

Eisentein pioneered the montage technique, which is 'the creation of sense or meaning not objectively contained in the images themselves but derived exclusively from their juxtaposition'. The famous 'Kuleshov experiments' out of the Moscow Film School in the 1920s conclusively established the principle by quantifying (through experiments on students) how the meaning of a single shot could change dramatically depending on the images that preceded it. Where an actor's expression is identical in three different shots, but is juxtaposed with diverse objects

¹⁹ The Great Train Robbery (Dir. Edwin Porter, 1903).
²¹ Ibid., p. 58.
(a plate of hot soup, a dead person, a small child playing with a toy), the context of the juxtaposed material evoked diverging emotions in the audience (hunger, sorrow and joy, respectively), which was then projected onto the actor. Audience participation and editing created the emotions. Any perception of reality experienced through the film originates in the audience and not in the film’s phantom capture of past lived experience.

D.W. Griffith’s legacy for film and its grammar is profound. But before he made what are now classics in film history, such as Birth of a Nation and Intolerance, in 1907, he first appeared in film in the biographical picture Falsely Accused. Falsely Accused! is possibly the first trial film. And it contains many of the trial film’s generic markers that remain visible today. Falsely Accused! opens with a murder of an inventor and the false accusation that his daughter committed the crime. The daughter’s boyfriend, dwelling on the crime scene, finds a motion picture camera, which miraculously had been running during the commission of the murder. He develops the film – which reveals the true murderer – and rushes it to the courthouse, where he shows it to the judge and jury in order to free his girlfriend. It has been argued that Falsely Accused! participates in the trial film genre by featuring the film audience as the diegetic trial’s jury. By showing the newly-discovered film of the crime in the courtroom that exposes the true killer, the jury within the film and the film’s audience eventually share the same information about the crime that legitimates the unanimous verdict of not guilty. This emphasis on the coincidence of film audience and filmic jury oversimplifies the interesting quality of this film and of trial films generally. Film audiences are not simply like a jury in that they are made to judge based on the facts presented by the film, but also that the legitimacy of their judgment depends on the perceived independence of the simultaneous investigations of the audience and in the film. Moreover, the coincidence of judgment of the film audience and the diegetic jury depends on a missing piece of evidence that is itself film (a still photograph or moving image), that once developed solves the crime in a triumphant climax. This self-referential gesture – making film the star of the film around which the meaning of the story about law’s relationship

22 Ibid., p. 176.
23 Biographs were an evolved form of Thomas Edison’s kinetoscope.
to truth is structured – is central to the common epistemology of law and
of film as well as to their claims to telling truth with authority.

The self-reflexivity in *Falsely Accused!* bolsters the experience of
film as a mechanism for revelation and truth-telling as well as it cri-
tiques claims of film’s totalizing knowledge. As the film gestures at its
own constructedness – by featuring the film camera as the source of the
story’s narrative thread – it nevertheless glorifies the capacity of film to
reveal and clarify the world. *Falsely Accused!* perpetuates the notion
that once any elusive perspective or fact is expressed or displayed (e.g.,
as captured by the undeveloped film), a coherent story will emerge. In
this way, the self-reflexivity of the film enables both a critique of film’s
fictive nature and the confirmation of film as an objective form of
knowledge. Spectators understand that what they are viewing is a point
of view – a filmic point of view – and, because they are made aware,
they feel capable of making judgments about what they see as true. And
so, as early as 1907, film is both evidence and the story of evidence. It is
about how one comes to know and it is about the contingencies of
knowing. Only seven years into the new century and twelve years after
the birth of cinema, the incorporation of self-reflexivity and extra-
diegetic juries (qua audiences) into the film’s world-making and judg-
ment were part of the story films told about law. The many trial films
that follow will contain similar marks of the genre.

II. Learning Faith in the Storyteller

After the First World War, two European film movements developed
in parallel, one in Germany and one in Russia, both working from the
point of view of a single narrator with whom the film audience identi-
fies. This is the development of film narrative from omniscient ‘tell-alls’
to singular, first person narratives. The development of the first person
narrative capitalized on the film’s capacity for intimacy and revelation,
blurring the ‘boundary between subjective and objective perceptions’.²⁶
In one sense, the first person narrative helped perpetuate the sense of
singularity and wholeness in the viewing audience, the sense that they
are seeing with their own eyes the events on screen as if live before
them. In another sense, however, knowing and seeing, from that singular
perspective, was problematized as based on the trustworthiness of the
individual telling the story. A mere twenty years after the birth of film,
the development of the first person narrative art was already critiquing
film’s purported omniscient qualities and its false sense of transparency.

The first person narrative film style drove the film industry. Indeed, it drove the cinematic art from Europe to the United States. Although in the way just mentioned, it could be seen as problematizing the first person's view point, this narrative form flourished, in part, because it was also experienced as glorifying and legitimizing the individual as the source of meaning. Based in large part on the illusion of ontological coherence of the thing on film and the thing filmed, the mainstream film experience perpetuated the fantasy of the authentic, centered subject from where the meaning of the film originates. Film theorists in the 1950s and 1960s would write that film, like language, is an instrument of ideology constituting the subject through its formal mechanisms of seeing and the appearance of being seen, the illusory delimitation of a central location, a perspective focused on the subject as center of the story, what Bazin called a 'bourgeois idealism'. Narrative theories of the Classical Hollywood style, 'which present psychologically defined individuals as its principal causal agents', only further the notion of cinema as encouraging the viewer-subject of film to construct the event of and in film as coherent and consistent and as hinging on their personal role and influence. This is simply an iteration of the dynamic in Falsey Accused! except that it is about the impact and authority of the individual juror rather than the collective jury.

It is here where we find the seeds of the liberal legal subject, the person who simultaneously stands apart from the film’s story and yet is integral to its storytelling, the idealized juror or legal hero whose independence from law is necessary for his righteous participation in it. But as with the legal system and cinema, a subject is never independent of his context; where we depend on the individual subject to be the source of knowledge (testifying to what he saw, learning what he knows through his senses), all we have is his story, about which we must also render judgment. We learn quickly with the development of German Expressionism that filmic persuasiveness (much like legal authority) depends on our assessment of the quality of the person telling the story, a matter that relies on quintessentially human (as opposed to technological or institutional) capacities.

German Expressionism, from roughly 1919 to 1933, draws on this question of subjective judgment and point of view. Where Griffith's

28 R. Stam et al., New Vocabularies in Film Semiotics, op. cit. (quoting Baudry).
29 Ibid., p. 189.
close-up signified intimacy, the close up of German Expressionism signified intrusion, raising the emotion al level to psychological drama. German films of this time became what Gerald Mast describes as ‘mirror[s] [reflecting] the subjective feelings of a single character’.\textsuperscript{10} The Cabinet of Doctor Caligari\textsuperscript{11} of 1920 [Photo 4] is the exemplar of such films, in which the film audience thinks it’s being told a tragic but true story by the main character, who turns out, in the end, to be telling a deluded and paranoid fable from inside a mental institution. At the other extreme of the same movement in style and time, is Fritz Lang’s M,\textsuperscript{12} from 1931, [Photo 5] a notorious trial film, if not because it depicts any recognizable national legal system, but because it tells the story of mob justice. The legal system being usurped by mobs – outlaws taking the reigns of law, for good or for ill – becomes a familiar paradigm in the years that follow. In this vein, consider films such as Fury, To Kill a Mockingbird, and Inherit the Wind,\textsuperscript{13} all films in which a mob features prominently and as powerful (if not more so) than the rule of law. Both aspects of German Expressionism, deluded individualistic accounts and a crowd’s overwhelming influence that usurps the strength and will of any one person, call into question the role of the individual, his perception and his storytelling in discerning and propagating truths and lies.

During these technical and narratological revolutions in film form, sound emerged. This is the story of the The Jazz Singer\textsuperscript{14} – the first feature length talkie – which opened on Broadway on October 6, 1927. Imagine: all of this signification and all of this cultural capital was spinning and developing from 1894 until 1927 without the aid of words. This evidences the power and the peculiar affectivity of the visual. And for those concerned with how legal and filmic ways of knowing and world-making overlap, imagine that all of this legal knowledge and culture was solely created through images. This was law and legal authority without spoken or written language. This vast visual legal landscape – images of justice and the rule of law – still exist today. But with the advent of dialogue and the hegemony of the word, it is far too easy to overlook the affect and sway of the visual in our experiences of representations of law.

\textsuperscript{11} The Cabinet of Dr. Caligari (Dir. Robert Wiene, 1920).
\textsuperscript{12} M (Dir. Fritz Lang, 1931).
\textsuperscript{14} The Jazz Singer (Dir. Alan Crosland, 1927).
III. The Rise of the Liberal Legal Hero in Classical Hollywood Cinema

As the United States grew its political and economic power from the late 1930s to the 1950s, Hollywood learned from these early masters of cinema and then took the reins of world film. Fritz Lang came to the United States and made films like *Fury* and *The Big Heat*. These films – both law and chaos kind of film (although *Fury* the only trial film) – bookend the film noir period, which is characterized by Chiaroscuro-style of filmmaking and the criminal underside of the post-war glory of American life and its institutions.  

*Fury* stars Spencer Tracy as Joe Wilson, who is wrongfully accused of kidnapping. While detained, we think he is killed by a mob who set fire to his jail cell. We, the film audience, see Joe’s face through the flames. His burning face is reproduced in the film’s diegetic newspapers and newsreels. In fact, Joe survives the fire, but only the film audience knows of this miracle. Here, the film within the film (newsreel footage shown in court of the jail burning and Joe’s apparent demise) fails to reveal the truth that Joe survived, but instead perpetuates the lie of Joe’s death. The film in pointing to itself (its moment of self-reflexivity revealing a lie) is a key to how the law in this film will fail to serve justice.

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35 *Fury* (Dir. Fritz Lang, 1936).
36 *The Big Heat* (Dir. Fritz Lang, 1953).
Joe seeks revenge for his near-death. Instead of entrusting the legal system with his exoneration, he manipulates the district attorney and conspires with his brothers to assist in the conviction of the mob for his 'murder'. When the jury is about to convict those in the crowd who set the fire – an example of the law failing to evince the truth of the matter – Joe dramatically enters the courtroom and halts the trial. This film marks a beginning of two decades of legal films that criticize the law's capacity for justice. It also evidences the liberal legal subject as legal hero: that person who at first stands in opposition to the law but whose tenacity and self-possession forge a place within the legal system in order to right the institution that has strayed from its honorable goal. While criticizing the legal system for failing its subjects, the legal hero adds strength to that system by showing how truth and justice through law depends on the participation of individual men.

Well known films of this ilk from this era are plentiful. Consider Young Mr. Lincoln and the The Paradine Case made by the influential 'auteurs' John Ford and Alfred Hitchcock, respectively. This is also the time that film theory, such as auteur theory and film noir became the subject of scholarly attention in France. But as Hollywood grew even more dominant, the Classical Hollywood style overshadowed film noir.

Classical Hollywood Style was an antidote to film noir. Some of the most famous Classical Hollywood trial films were made during this time. They created some of the most memorable and heroic lawyer characters on screen and launched hopeful commentaries about the off-screen American legal system as it was dramatically evolving to more generously provide civil rights and civil liberties to all Americans. In contrast to the skepticism that pervaded the representations of law in the 1930s and 1940s, these later films portray a more hopeful vision of
Jessica Silvey

American law and justice. Consider *Adam’s Rib*\(^{44}\) – a path breaking film for women in the law and on screen, and one of the few comedic trial films. Consider also *Twelve Angry Men*,\(^{46}\) Sidney Lumet’s masterpiece starring Henry Fonda and Lee J. Cobb that glorifies the jury process and the contribution of every man to the law’s endeavor. Or think of *Compulsion*,\(^{47}\) based on the case against Richard Loeb and Nathan Leopold from 1924 (the ‘Loeb Leopold case’\(^{48}\)) in which Orson Welles plays the boys’ attorney (the famous Clarence Darrow) and delivers what some say is the longest monologue to a film audience at approximately fifteen minutes.\(^{49}\) Other similar films of the emerging trial film genre include *Inherit the Wind*,\(^{50}\) Stanley Kramer’s rendition of the Scopes Monkey trial, and *To Kill a Mockingbird*,\(^{51}\) in which Gregory Peck brings to life Harper Lee’s Atticus Finch and dramatizes the complicity of the American legal system with the personal and social tragedies of the Jim Crow era. These films exemplify liberal legalism as they embolden the viewer’s expectations in law by rooting the promise of justice in the determined and enlightened individual. We come to believe that although the legal system can be a tortured place, a determined and enlightened individual (a legal hero, for example,\(^{52}\) whose enlightenment comes from the film’s self-conscious display) can successfully navigate the legal system, participating in and thereby enacting the justice he has learned to demand from the idealized rule of law. The subject of these Classical Hollywood trial films (the subject constituted by them and their descriptive content) is the liberal legal subject of American and continental legal theory, the subject whose distrust and critique of law’s totalizing presence and of its systematized non-personalized process is integral to and becomes integrated in the legal

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\(^{45}\) *Adam’s Rib* (Dir. George Cukor, 1949).

\(^{46}\) *Twelve Angry Men* (Dir. Sidney Lumet, 1957).

\(^{47}\) *Compulsion* (Dir. Richard Fleischer, 1959).


\(^{49}\) During this speech Welles breaks with film’s diegesis and in lieu of addressing the judge in the film addresses the film’s audience, expounding on the horrors of the death penalty.

\(^{50}\) *Inherit the Wind* (Dir. Stanley Kramer, 1960).

\(^{51}\) *To Kill a Mockingbird* (Dir. Robert Mulligan, 1962).

investigation that manifests law’s promise of individual and equal justice.

While Hollywood was creating and distributing these memorable stories of American justice and its pursuit of truth around the world as based on the indomitable foresight of the legal hero, the French were classifying these films in terms of the medium’s peculiar way of making meaning, the most famous theories of which were memorialized in *Cahiers du Cinéma* by the cineastes André Bazin, François Truffaut and Jean-Luc Godard. Bazin began with the basic premise of the ontological bond between film’s photographic representation and the object or event being filmed—an indexical linkage suggesting that film “bears unimpeachable witness to ‘things as they are’”.

But he went on to show how this mythology of total cinema was just that: a myth. Based in large part on the illusion of visual coherence of the thing on film and the thing filmed, French theorists played up the fantasy of the film’s authentic, centered subject who can make claims to know the world and to identify truth, the subject whose development began with Griffith and Eisenstein, and who was made omniscient in the aforementioned Hollywood courtroom dramas of the 1950s and 1960s. Ironically, as the French theorists described the illusion of reality that film creates through its aural and visual sensory experience, Hollywood perpetuated through the trial film genre an ideology of legal authority premised on each individual’s ability to enact justice by testifying to that which each can claim to know through observation.

The French film theorists wrote that film, like language, is an instrument of ideology. Whereas spoken or written language interpellates addressees and addressors and defines the identities of those conversing or reading,

film constitutes its subject through its formal mechanisms of seeing and the appearance of being seen. Each film through its play of shot and counter-shot delimits an illusory central location, a perspective from which the film makes the most sense. This locus is the dominant film viewer, the subject at the center of the story whose perspective is perceived as objective (neutral) but which perspective is necessarily subjective (one perspective and not another). While evolving film theory described this omniscient subject as one ideological effect of the filmic apparatus, a partner in ‘bourgeois idealism’ whose politics ignore the

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54 *Ibid.*, p. 21; T. de Lauretis, *Alice Doesn’t: Feminism, Semiotics Cinema*, Bloomington, University of Indiana Press, 1984, p. 8 (describing interpellation as the ‘mapping of social vision into subjectivity’ whereby the ‘movement of film actually inscribes and orients desire. In this manner cinema powerfully participates in the production of forms of subjectivity that are individually shaped yet unequivocally social’).
influence of institutions and aggrandize the power of individuals, Classical Hollywood (and particularly the courtroom drama) dominated the film industry with its ‘presentation of’ psychologically defined individuals as its principal causal agents and perpetuated the notion of the world (in and beyond film) as coherent and predictable, its epistemology based on the individual’s righteous participation and influence.

These representations of justice have persisted. Consider more recent films, such as Erin Brockovich or A Civil Action, both of which are squarely in the Classical Hollywood tradition, their stories based upon the central, independent subject whose skepticism of law is undone by the filmic experience of revelation. Consider also how many recent trial films are a combination of a docudrama (‘based on a true story’) and the Classical Hollywood style, two genres that best perpetuate a ‘bourgeois idealism’ insofar as they triumph the liberal legal spirit who is the lone legal conqueror, devoted and idealistic (think not only of John Travolta in A Civil Action and Julia Roberts in Erin Brockovich, but also Paul Newman in The Verdict and Jodie Foster in The Accused). These legal heroes prevail in a tainted legal system by making a difference through their participation. That many of these films are based on true stories makes this ideology of the capacity of the common person to triumph in a legal bureaucracy even more authoritative and persuasive. And although many of these films are not obviously self-reflexive in their film form, each film climaxes around a visual revelation: a found document, a testifying witness, or a discovered identity. The film’s indices of ‘truth’ – achieving a just verdict through visual revelation – furthers the film’s epistemological authority as it tells a story of law through sight. The truth told is both that seeing is knowing, and, as each viewer bears witness to law’s achievement of justice, that the righteous participation of individuals is all that is required.

55 R. Stam et al., New Vocabularies in Film Semiotics: Structuralism, Post-Structuralism and Beyond, Routledge, 1992, p. 186-87 (quoting Baudry).
56 Ibid., p. 189.
57 A Civil Action (Dir. Steven Zaillian, 1998), Erin Brockovich (Dir. Steven Soderbergh, 2000).
58 The Verdict (Dir. Sidney Lumet, 1982), The Accused (Dir. Jonathan Kaplan, 1988).
59 Of course this ideological effect of the trial film, like any ideology, is not monolithic but full of fissures. In fact, film’s ubiquitous self-reflexive tendencies (telling stories through pictures about telling stories through pictures) can be a way both to comment on its illusion by pointing to its constructedness and providing a mode of resistance to the ‘myth of total cinema’. For example, feminist and psychoanalytic film theory exploits these self-referential gestures using classical film’s ideology of gender against itself. (Classical Hollywood film inscribes patriarchal relations through structured gazes.) By showing how the audience participates in, and to some extent embraces, hierarchical gender relations through the mutually constituted desire of seeing
IV. Conclusion and the Next Frontier?

As it turns out, a substantial number of trial films are based on true stories. In addition to the ones mentioned above, consider also Anatomy of a Murder, Inherit the Wind, Reversal of Fortune, In the Name of the Father, A Cry in the Dark, Helter Skelter, Compulsion, Young Mr. Lincoln, North Country, to name only a few. These films ‘based on true stories’ are not necessarily popular because they are based on fact, but instead because they exemplify throughout the one hundred years of cinema the central ties that bind filmic worldmaking to legal worldmaking. From the screening of the Lumière brothers’ actuality films when the audience ran from the theater worried the train would run them down to the premier of docudramas such as A Civil Action when audiences are made to worry that the legal system is not sufficiently capacious to condemn murderous polluters, these trial films play on the question of how we decide that we know what we do.

Ultimately, these ‘truth tales’ and are about the difficulty and duty of judging. As we see the roots of early film in even the most recent of these legal docudramas – the unity of sight and knowledge (an issue of evidence and ways of knowing) and of being seen and being counted (an issue of subjectivity and the ideological importance of each individual) – we also see the roots of law and justice in early film. The authority of the meaning made through law and through film remains based in large part on the strategies of reflexivity to recuperate criticism (of totality and of illusion). And the epistemological authority of both the film and law portrayed is grounded on the claimed centrality of each individual participant (audience member, juror or legal everyman), drawing on the ideology of the liberal subject whose claim to rightly know and to legitimately judge the event at issue is based on the centrality of their

and being seen (film’s central semiotic relation), scholars like Laura Mulvey sought (and succeeded at) making possible a new form of cinema – a ‘women’s cinema’ or utopian film – that attempts to subvert these hierarchical relations by challenging traditional expectations for the role and meaning inscribed by the cinematic gaze. Orit Kamir provides some excellent examples of this feminist reinscription of power in trial films in her book Framed: Women in Law and Film demonstrating how law’s life in film can serve as fodder for a jurisprudential critique by imagining a more inclusive, compassionate legal order. Kamir, O., Framed: Women in Law and Film, Duke University Press, 2006.


perspective to the (legal or filmic) meaning of justice that is being conveyed.

How will the trial film genre evolve? What are the contemporary representations of justice that are circulating in popular culture today? Law’s most current manifestation in cinema appears to be the documentary trial film, such as Paradise Lost, The Staircase, Murder on a Sunday Morning or Capturing the Friedmans.\(^2\) Whereas trial films based on true stories, such as Compulsion or The Accused, are fictionalized accounts of notorious trials, the recent spate of documentaries about contemporary trials are nonfiction accounts of relatively unknown legal cases. In many instances, these truth tales are personal accounts, versions of the filmic biography and autobiography, made possible by the explosion of camcorders, personal film cameras and digital photography. How these new film forms affect the meaning produced by the documentary trial film (the importance of truth, the correctness of verdicts and their relationship to justice) may be a subject to develop more fully at another time.

Suffice it to say, however, that these nonfiction films attempt to correct an injustice by revealing certain truths. Capitalizing on the relative anonymity of the case being portrayed, the filmmaker can be the single and persuasive source of the facts to be readjudicated by the larger film audience. In this way, these documentary trial films are a kind of legal appeal, attempting to affect a legal outcome, whether reverse or correct as the case may be.\(^5\) Fictionalized trial films are not activist in this way. For the most part, they end with a satisfying experience of closure as regards the viewer’s role in that system or with a sense of a more complete understanding of the place of the trial (and the verdict) in history.\(^6\) Whatever critique of law may have motivated the fictional trial film in the beginning, it has been deflated at the film’s conclusion upon the legal hero successfully challenging the law to right a wrong or the law having evolved to include the contemporary community in its endeavor.

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\(^2\) Paradise Lost: The Child Murders at Robinhood Hills (Dir. J. Berlinger and B. Sinofsky, 2000); The Staircase (Dir. J.-X. de Lestrade, 2004); Murder on a Sunday Morning (Dir. J.-X. de Lestrade, 2001); Capturing the Friedmans (Dir. A. Jarecki, 2003).


\(^6\) Indeed, it is the nature of the classical Hollywood genre and of the trial film specifically to satisfactorily conclude its story and to make its viewers feel like critical subjects who become satisfied with the film’s moral tale. This satisfaction leads to a kind of complacency with regard to the viewing endeavor necessary to perpetuate legal and filmic authority. We are critical of law, but we are constructed as sufficiently participatory within a legal system that is constituted in and by the film that we feel we have done our part to affect a justifiable end.
Whereas both the documentary trial film (such as Capturing the Friedmans) and the fictionalized truth tale (such as Compulsion) rely on the force of observable phenomena (the events on film) to tell a persuasive story of justice, at the same time the mechanism by which the film’s story is told (the film medium and the legal process) is shown to be inherently unstable. This is where the roots of film and its illusion of reality come full circle. The trial, by its nature, reflects the possibility of multiple and conflicting stories. Cinema’s play on the hermeneutics of seeing and believing and its self-reflexive tendencies raise questions of the epistemic foundations of filmic representation. By asking jurors (or film audiences) to judge these stories of law on film, and also by exposing those legal judgments to appeal (or further contemplation by rendering them in film form), law and film manifest the impossibility of knowing anything with certainty. And yet, the overwhelming influence of both cinema and law in our culture is that each claim to narrate the definitive story. The irony is palpable. While both film and law rely on the incontrovertibility of observations by testifying witnesses (qua viewers) to tell their stories, these stories – even those that purport to be documentary footage of real events – manage to convince their audiences that no story is undeniable. The future of the representations of justice in film therefore may be found only by reclaiming cinema’s past and by recalling film’s capacity to change and shape our expectations of the world (hopefully for good) through imagination and fantasy.

References


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