Art and Legal History

Timothy J Innes, Mr.
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By Timothy J. Innes

I
INTRODUCTION

For many, art is an essential component of life. It offers beauty, fulfillment, inspiration, and meaning. But art can also be used as an effective teaching tool. In my course, American Legal History, I use art to inculcate a deeper understanding of the time period under discussion. I have found, and believe, it helps my students understand the historical context in which the law evolved, and changed over time. This paper will explain how I have used a number of different art forms in my class.

II
IN THE EYE OF THE BEHOLDER

Art comes in many forms. Even formats that are not typically thought of as art can rise to that level. There are the obvious categories: the visual arts including painting, sculpture, photography; the performing arts including theater, dance, movies, and music for example and there are the written forms, both prose and poetry. Even non-fiction works like great historical writing can be considered art. A legal opinion can, on rare occasions, rise to the level of art - think Cardozo or Holmes. Great speech writing and oratory can certainly be considered art - Lincoln’s second inaugural for example. At some point in my class I utilize nearly all of these forms.

III
ART AS A TEACHING TOOL

As an introduction I should say that I utilize Power Point in each session. I have a few rules of thumb when it comes to Power Point. I keep the number of slides relatively small, between 20 and 25, and I don’t like a lot of text. This makes it a perfect tool for showcasing paintings, photographs, sculptures, engravings, lithographs or medieval manuscripts.

The first lecture, which is concerned with ancient legal systems, is replete with images of sculptures, reliefs, and lithographs. However the primary artistic medium used is one you might not suspect - theater. While discussing the Athenian legal system, I present a segment from the play The Wasps by Aristophanes. This classic satirical comedy was first preformed in 422 B.C. The subject is the enormous juries the court system employed, comprised of older Athenian male citizens. The play highlights the highly litigious nature of the Athenians and the central role the court system played in everyday life, even functioning as a kind of old age pension system.
The second class examines the nature of, and factors that led to, the common law in medieval England. I place special emphasis on the reign of King Henry II. In lecture two I introduce a series of illustrations from medieval chronicles depicting the various “ordeals” the common people were subjected to methods of proof in criminal procedure. In addition, a striking photograph of an actual “royal writ” from 1096 is shown, as well as seventeenth and eighteenth century lithographs depicting criminal procedures and the Central Courts at Westminster.

In week three the scene shifts to early Colonial America with a special emphasis on the Massachusetts Bay Colony. Period paintings depicting life in the early colonies, along with an image of the Bay Colony’s original Charter and their very unusual Seal are shown. In addition, a short video clip is shown from the PBS documentary *God in America.* The segment shown is a dramatization of the trial of Ann Hutchinson. The purpose here is to show the melding of the court system, legal code, and religion into the fabric of life during this period. Lastly in the class I do a little acting myself. With the help of a few props and a volunteer student, I reenact a *livery of seisin* ceremony, a form of unwritten land transfer.

Lectures in weeks four and five concern the revolutionary and constitutional era. American portrait painting, and period lithographs are shown. Two video clips are shown, both from the award winning HBO series *John Adams.* The first depicts the debate between John Adams and John Dickinson in the Second Continental Congress on the eve of independence. A second clip shows the vote for independence.

In week six we take on the emerging Supreme Court and the codification movement. Here again period paintings, portraiture and early daguerreotypes are used. In addition a video clip from the PBS documentary *The Supreme Court* is used. The segment highlights the foundational decisions of the Marshall Court. I also pass around an 1838 copy of *The Revised Statutes of the State of Michigan,* the first printed after our State entered the union. The Code is filled with handwritten annotations in the elegant hand of its original owner.

The next lecture is concerned with legal culture and education in the antebellum period. It was during this time that some of the greatest American portraiture was created. Many of the subjects were of the giants in the law. I also talk about one painting in particular, as it represents perfectly the political and legal culture of the time. The painting is *Webster’s Reply to Hayne* by George Healy. It depicts the dramatic ending to the debate on Nullification in which Webster declares, “Liberty and Union, now and forever, one and inseparable.” This massive work, one of the most famous of the nineteenth century features 120 recognizable individuals. To underscore the esoteric world of special pleading, I pass around an 1831 copy of *Chitty on Pleading.* It was also during this period that we see the merging of the courts of law, and equity in the United States. To highlight this movement I read a segment from Charles Dickens, *Bleak House.* This book, set in the 1830’s, was a scathing indictment of the equity courts in England.

The next lecture is one on the constitutional issues during the Civil War, the Civil War Amendments, and Reconstruction. I read a portion from Lincoln’s first and second inaugural addresses. The topic of lecture ten is American law between the Civil War and World War I. This was the time of Social Darwinism, and when the Fourteenth Amendment was used to strike down legislative attempts at social justice. To highlight
the era, I show a series of photographs from Jacob Rees’s *How the Other Half Lives.*

Moving into the mid-twentieth century, I focus on the pivotal depression and war years. The election of FDR (four times) led to a complete transformation of the philosophical underpinning of the Supreme Court. To underscore how much America was transformed by depression and war, I present a series of photographs taken by photographers from the Farm Security Administration compiled in a book called *In This Proud Land.*

To give my students a sense of the massive popularity that FDR enjoyed just prior to his infamous court packing scheme, I play a speech given by FDR in Madison Square Garden during his 1936 campaign. To convey the spirit of the time I read a description of America in the second winter of the depression from a Pulitzer prize winning book by Arthur Schlesinger, Jr., *Crisis of the Old Order.* It is a short reading, but incredibly powerful.

The next lecture focuses on the Warren Court and the expansion of civil liberties and the Civil Rights Movement. That lecture features an interview with an aged Hugo Black, in which he gives an impassioned defense of criminal defendants’ rights as encompassed in the Bill or Rights. The interview is taken from the before mentioned PBS documentary *The Supreme Court.* In the same lecture two clips are shown from a 1993 dramatization of *Brown v The Board of Education* called *Simple Justice.* The film is an adaption of a book by Richard Kluger of the same name. The two clips depict the opening arguments, and closing arguments before the Supreme Court. One more reading rounds out the civil rights lecture and is taken from a book written by Taylor Branch called *Pillar of Fire.*

The last two lectures of the term cover society and the law from 1968 to the present. The women’s movement is covered which includes a reading from *The Declaration of Rights and Sentiments,* the result of the Seneca Falls convention of 1848. The last lecture includes a series of oral arguments from the Roberts Court, most notably from the case of *Citizens United v Federal Election Commission.* For this I utilize the U.S Supreme Court Oyez Project website. The site not only supplies the audio of oral arguments, but also presents them along with text, and a photo of the person speaking. It is a wonderful tool for learning.

Naturally there are copyright concerns when it comes to using materials such as this. However, a lot of what I use is in the public domain. For that material which is not, the duration of the video clips, or readings, are short enough that they come under the protection of fair use or the Education Exception Act.

In conclusion, although art is an important part of my presentations, restraints on the length of this article precluded me from naming every example. As you can imagine the majority of time is devoted to traditional lecturing and class discussion. Having said that, I continue to believe that art is a vital and valuable education enhancement that can give my students a sense of the spirit of society at any given moment.
* Librarian, Head of Public Services, and Adjunct Professor of American Legal History, Thomas M. Cooley Law School, Ann Arbor Branch, B.S., History Michigan State University, M.L.S. Wayne State University, J.D, Thomas M. Cooley Law School.

2. ARISTOPHANES, THE WASPS (422 B.C.)
3. CORPORATION FOR PUBLIC BROADCASTING, GOD IN AMERICA (2010)
4. HOME BOX OFFICE, JOHN ADAMS (2008)
6. THE REVISED STATUTES OF THE STATE OF MICHIGAN (1838)
7. GEORGE HEALY, WEBSTER’S REPLY TO HAYNE (1851)
8. JOSEPH CHITTY, CHITTY ON PLEADING (1831)
9. CHARLES DICKENS, BLEAK HOUSE (1853)
10. JACOB REESE, HOW THE OTHER HALF LIVES (1890)
11. ROY EMERSON STRYKER, IN THIS PROUD LAND: AMERICA, 1935-1943 AS SEEN IN THE FSA PHOTOGRAPHS (1973)
12. ARTHUR SCHLESINGER JR. CRISIS OF THE OLD ORDER, 1919-1933 (1957)
13. CORPORATION FOR PUBLIC BROADCASTING, SIMPLE JUSTICE (1993)