

Subjectivity in Legal Cinema:  
Where the Film Meets the Spectator

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## I. Subjectivity on Screen

While theorists of the study of Law and Film have mainly focused on the portrayal of the law in various kinds of cinema, hardly any have ventured into the role of the spectator in Law and Film critique. As a result, studies have been confined to only the object of the film, which is usually the plot, the dialogue, or the montage at play. Seldom have studies deliberated on the subject of the film, which is the spectator. In this emerging interdisciplinary field, there is a glaring need for the inclusion of the subject in study. This is mainly because the subject and object which any film theorist would discuss will play a dual role in a legal film. They will no longer only be considered a viewer subject and an object of the film, but also take on the role of a legal subject and object.

With the rise of French and Italian new wave cinema, the concept of subjectivity has moved to the forefront of film critique and theory. The subjective camera enables the audience to experience film in a completely different way, manipulating or enriching viewers and coaxing them to engage with film as a medium. One of the earliest proponents of analyzing work through the subjective lens was Bertolt Brecht, playwright during the Nazi Regime. Brecht's work encouraged spectators to engage in the visual literature, and contribute to the same, resulting in a 'dialectic relationship'.<sup>1</sup>

In this paper, building on the Brechtian notion of theatre, and extrapolating it to films, I seek to find what brings out subjectivity in a film, but restrict the scope of study to the legal genre. In pursuance, I shall discuss how an idea is delivered to the spectator through various tools used by the filmmaker, which will constitute the first part of the paper. Next, I shall discuss how the spectator may, in turn, respond to what the filmmaker offers her. This could

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<sup>1</sup> Bertolt Brecht, *Brecht on Theatre: The Development of an Aesthetic*. John Willett, ed. Methuen, London (1964).

be in the nature of assuming rationales for certain occurrences, motives of a character, or picking sides. This part will deal with why spectators respond differently, or expect different things from the same film, especially in the case of legal films. After analyzing the dialectic relationship between the filmmaker and the spectator, I will argue that subjectivity cannot be portrayed without the use of a spectator and question whether subjectivity can even be 'portrayed' itself.

## II. The Medium

*“The film establishes this equivalence at the outset. *Minority Report* opens in the middle of a precog vision of murder, placing the audience in the position of judging future events as if they were happening in the plot of the film, until it becomes clear that the depicted events have not yet happened. This trick perfectly illustrates the film’s method of identifying the film audience with the “adjudicatory audience”.<sup>2</sup> We see the opening scene and believe it is actually happening in the film’s story; so we subsequently join detective Anderton in approving the arrest of the perpetrator of the murder depicted in the vision. Accordingly, from the outset, film’s representational apparatus is used to reinforce the notion that law’s adjudicatory function is to find the truth.”<sup>3</sup>*

Law and film both depend on the art of storytelling. To communicate an idea of a story to another, one always requires the usage of a medium to portray certain passages from the intangible to the tangible realms in cinema as well as law. For instance, an attorney who pleads

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<sup>2</sup> Jessica Silbey, *Patterns of Courtroom Justice*, in *Law And Film*. Stefan Machura & Peter Robson, eds. Blackwell Publishers (2001), at 97.

<sup>3</sup> Cynthia D. Bond, *Law As Cinematic Apparatus: Image, Textuality, And Representational Anxiety In Spielberg's Minority Report*, 37 CUMB. L. REV. 25, 2007, at 34.

in court tries to effectively use the courtroom to conjure his most believable version of a certain event. Films such as *Runaway Jury* and legal television dramas such as *Law and Order* can be testimony to this. Moreover, real life examples of how law places a great amount of reliance on storytelling, may be found in various examples across the globe; a classic instance is the Nuremberg trials.<sup>4</sup> Similarly, with reference to films, in the above description of a scene from Steven Spielberg's *Minority Report*,<sup>5</sup> it is evident that the filmmaker has tried and succeeded in directing the audience to feel a certain way. This is the power of effective storytelling tactics, which allow one to communicate her idea successfully.

This is accomplished through the effective utilization of the medium. This gives rise to the critical question as to what a medium is. According to many scholars, this is a question that gives rise to a series of further questions that are each as much cinematic as they are jurisprudential.<sup>6</sup> A medium constitutes, allows, or prescribes the passage from thought to action, from idea to perception, or from feeling to affection, in the mind of a viewer.<sup>7</sup> This means that affectivity, subjectivity and perceptivity influence what the viewer takes from the film. A medium must thus be “sufficient to actualize certain relations or reflections between images (mental, aesthetic, biological, political, etc.) as the possibility of cinema as well as the possibility of legality; but it is also through the medium that one deconstructs these relations”.<sup>8</sup>

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<sup>4</sup> Rick Garnett, *Justice Jackson's opening speech at Nuremberg*, MIRROR OF JUSTICE (Nov. 22, 2010), <http://mirrorofjustice.blogspot.com/mirrorofjustice/2010/11/justice-jacksons-opening-speech-at-nuremberg.html>. See also: “*A court of occupiers cannot be just*”: Ukrainian director's courtroom speech, THE GUARDIAN (Aug. 25, 2015), <https://www.theguardian.com/world/2015/aug/25/ukrainian-film-maker-jailed-oleg-sentsov-20-years-speech>; Terry Turner, *Courtroom judge's caring speech brings troubled teens to tears*, GOOD NEWS NETWORK (Apr. 6, 2016), <http://www.goodnewsnetwork.org/watch-this-judges-speech-bring-trouble-teens-to-tears/>.

<sup>5</sup> MINORITY REPORT (Amblin Entertainment et. al. 2002).

<sup>6</sup> *Id.* at 133.

<sup>7</sup> Referred to hereinafter as “affectivity, subjectivity and perceptivity”.

<sup>8</sup> *Id.* at 133.

It is the plot and the thread that ties the plot together – nothing but image assemblage in a way that would tell the audience one’s version of a story.

### **Utilising a Medium Effectively in Legal Films**

In this part of the paper, I discuss how a medium is used in films where the two abstract realms of law and cinema are juxtaposed. In my example comparing an attorney’s pleadings in court to a filmmaker’s representation of his ideas to an audience, what one must appreciate is that a filmmaker gets just one shot at communication to his audience; the attorney can repeat, alter, ask for time, and even change the course of his story at will. Hence, the filmmaker has an arguably greater burden to best communicate their narrative

It is pertinent to note that the media of both cinema and law are constructed, albeit differently, through the process of image assemblage.<sup>9</sup> While for films, this is how the various scenes are arranged in a particular order to obtain a desired effect, for law, it is purely how one argues her case. For instance, this could be how the lawyer arranges her speeches and questions, showcases evidence, and introduces key witnesses. The logical sequence which is required for a spectator to understand the issue at hand is a space constructed within the formation and arrangement of images or “spectacle”.<sup>10</sup> According to some theorists, this is the method through which affectivity (the way our affections or disaffections towards a character affects our outlook), subjectivity (our construction of possible judgment) and perceptivity (how we perceive certain facts shown by the filmmaker) are distributed.<sup>11</sup>

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<sup>9</sup> Id. at 132.

<sup>10</sup> Id.

<sup>11</sup> Id.

For instance, if we consider a crime film, the way the audience ‘perceives’ guilt is highly influenced by two other factors: the affection drawn from the immediate image, which includes camera-work and music, and the subjectivity or the surrounding montage in which the filmmaker constructs the mental or emotional space of a possible judgment.<sup>12</sup> This can be seen in movies such as *Silence of the Lambs*<sup>13</sup> and *Psycho*,<sup>14</sup> where the filmmaker allows the spectator to participate in the anxiety of the struggle between the legal order and serial homicide. These films have been extremely well received not only because of the plot, or the actors, but by the music, screenplay, and the intellectual and emotional experience they offer. They show that law and film need not be separate, and through the effective use of affectivity and perceptivity, they have lent a touch of humanity to the law. Therefore, while I seek to restrict my focus to subjectivity, due to the reason that the three factors are inseparable, I shall substantiate my arguments using affectivity and perceptivity.

### **Spectatorship**

Spectatorship is an essential aspect of the film industry, and more so when a film deals with subjectivity, which is usually the case when there may be different interpretations of a scene, or alternative endings, or even complex characters. In this section, I shall discuss the various ways a spectator views a film, and how her ideas are shaped. I will address three aspects of a spectator’s state of mind while watching a film: the film’s structure, the cultural priors of the spectator, and their psychological satisfaction which is closely associated with subject positioning, which is the way viewers associate themselves with the characters in the film. I

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<sup>12</sup> Leslie Moran, Emma Sandon, Elena Loizidou, and Ian Christie, eds., *Law’s Moving Image*. Cavendish Publishing, London (2004).

<sup>13</sup> *SILENCE OF THE LAMBS* (Strong Heart/Demme Production 1991).

<sup>14</sup> *PSYCHO* (Shamley Productions 1960).

will then juxtapose these with the previous discussion on the ‘medium’ in cinema, and attempt to illustrate how the medium and spectator work together in the reading of a film.

One of the most important aspects of understanding spectatorship through the lens of subjectivity is the foundation on which the spectator’s views are built. To elucidate what I mean by this ‘foundation,’ I will take recourse to analogy from legal jurisprudence. I choose this particular analogy for two reasons: (i) The first being, this is a paper that will analyse legal films; (ii) Second, the understanding of both the law and a film by an individual is shaped by ideologies that are completely outside the ambit of both law and film, making them shared yet separate. In other terms, how one perceives the law and a film stems from one’s presupposed, ingrained, or nurtured beliefs and ideologies, which may not even be dependent on one’s legal education or even the presence of such, or the script or trajectory of the film.

At this juncture, it is pertinent to explore what this analogy actually is, and thus proceed to how the foundation of a spectator’s views is built. Of late, legal scholars have shifted focus from legal object, or the law, to the legal subject, or the person affected by the law. These new thinkers believe that the study of jurisprudence must extend to how the legal subject perceives the law, and that this perception of the same law differs among different social and political groups. This difference in opinion must not be studied from the point of view of the individual but from that of different social groups. This jurisprudence of the subject recognizes that questions about the nature of law must equally be concerned with the ‘ideological, sociological, and psychological features of our understanding of the legal system.’<sup>15</sup> This is a sort of “cultural software” – a set of tools for understanding the social world, a copy of which is distributed to

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<sup>15</sup> J.M. Balkin, *Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence*, 103 YALE L.J. 105, 1993, at 3.

each of us.<sup>16</sup> Above all, this school of thought places enormous importance on culture, and states that ‘jurisprudence of the subject is above all a cultural jurisprudence, for it is culture that creates legal subjects as subjects.’<sup>17</sup>

One of the most popular proponents of intellectual scrutiny via the legal subject is Ronald Dworkin, well known for his theory of law as integrity. The merits of Dworkin’s approach lie in its premise that legal understanding is nothing but an interpretive activity.<sup>18</sup> He believes that individual subjectivity plays a significant role in the construction of features of the legal system.<sup>19</sup> He also states that the dialectic of hypothetical and actual justification presupposes that our judgments of legal coherence are shaped by our judgments of political morality. Therefore, the contributions of political and moral belief to our judgments of coherence and incoherence are most obvious when they produce disagreement.<sup>20</sup> Controversially (footnote 23), he fails to take into consideration ideological, psychological and moral factors that may influence this interpretive activity.<sup>21 22</sup>

### **Subjectivity as Not Merely Depiction, but Interaction**

In this section, drawing from the discussions on the spectator and the medium, I argue that subjectivity in film can be achieved only by striking a balance between the two. In pursuance, I contend that increasing the mental or emotional space of a possible judgment

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<sup>16</sup> *Id.* at 103, 4

<sup>17</sup> *Id.*

<sup>18</sup> Ronald Dworkin, *Law’s Empire*. Harvard University Press (1986), at 87.

<sup>19</sup> *Id.* 87-90

<sup>20</sup> *Supra*, note 15 at note 103., 31

<sup>21</sup> Ronald Dworkin, *A Matter Of Principle*. Harvard University Press (1985), at 177.

<sup>22</sup> *Supra*, note 15 at note 103., 6.



allows the spectator all the more area to think. This is when the filmmaker gives ample space for doubt, or difference in thought processes, or conflicting opinions.

I shall begin with the discussion on open ended films, and how they expand the room for subjectivity. From this discussion, I will shift to a debate wherein I propound that films dealing with law and morals are always open ended, at least on the legal aspects. Here, I will attempt to argue that a case or verdict given in a film does not satisfy a film and law critic, as it does a layman. For this, I will make a two-pronged argument: people's perception of what the law ought to be is subjective, and the perception of law of the decision-maker in the film may not be the same as the spectator. Hence, this gives legal films ample space for interpretation by the viewer.

### *I. Subjectivity in Law*

One's judgment of legal coherence is not only affected by one's knowledge of legal doctrines, but also by the amount of cognitive effort put into considering the normative consistency among the doctrines that one knows.<sup>23</sup> Hence, it is not only the variety in the legal theories that leads one to believe in one school of thought, but the result of selecting which theory appeals to one the most, intellectually or otherwise. This is where the importance of moral and political ideologies in interpreting a legal scenario comes across dramatically, much to the misery of Dworkin and his supporters.

### *II. Legal Films and Subjectivity*

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<sup>23</sup> See Duncan Kennedy, *Freedom and Constraint in Adjudication: A Critical Phenomenology*, 36 JOURNAL OF LEGAL EDUCATION 518, 1986, 531-33.

I will discuss how legal films, through the medium of film and dialogue, coax the spectator to engage with the film. This is done through effective ‘portrayal’ of the story by the medium, and I use the term ‘portrayal’ cautiously because the word seems to be unidirectional. In fact, I propose that for a subjective film, the medium is merely delivering a message, awaiting reply. The rest of the plot is in the hands of the spectator.

In *Rashomon*,<sup>24</sup> the judge is absent and the audience is left to make a decision due to the open-ended nature of the storyline. In this case, the filmmaker had left extreme open-endedness in his film. This made the surrounding montage structured in such a way that it offered the maximum scope for thought. Moreover, the clever play in camerawork, where the camera was placed as though posing questions to the audience further puzzled the spectator. Hence, every spectator had her own take on the conclusion, which the filmmaker did not disclose even in the end. In this film, the audience was placed exactly in the role of a judge, whereas Hart puts it, most issues are open-textured.<sup>25</sup>

In *12 Angry Men*,<sup>26</sup> one can see that a follower of the positivist school, which strictly views the law for what it is, would likely be disenchanted with Fonda’s heroics and that a follower of the natural school, which sees the law for what it ought to be, would hail them. The former would see fault in the introduction of evidence (replica of the alleged weapon) by a member of the jury (Fonda) and many other procedural infirmities. The latter, however, would celebrate the acquittal as a win for justice based on morality. This is under the presumption that the latter theorist was convinced through affectivity that the underdog was indeed portrayed innocent enough to give him the benefit of the doubt.

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<sup>24</sup> RASHOMON (Daiei Film 1950).

<sup>25</sup> H.L.A Hart, *The Concept of Law*. Clarendon Press (1961).

<sup>26</sup> 12 ANGRY MEN (Orion-Nova Production 1957).

Another example of subjectivity coming into play in legal cinema can be seen in the juxtaposition of two movies that closely mirror each other: *Inherit the Wind*,<sup>27</sup> and *The Exorcism of Emily Rose*.<sup>28</sup> Both films depict an apparent black sheep up against all odds, against an angry majority. In the former film, a science teacher tries to explain the theory of evolution to creationists who refuse to budge; the spectators support him immensely. It is, after all, free speech. However, the same audience made to watch the latter film most probably will support the side against science, but with doubt. The latter film involves the trial of a priest for the death of a girl during an exorcism. Since the film oscillates between the trial scenes and flashbacks from when the girl was alive, most of the story is depicted from the priest's and his non-believing lawyer's side. As the lawyer too slowly begins to believe, the audience begins to lean the same way. I argue that this is the interplay of emotion with the storyline; even an audience with a scientific bent of mind would side with a story relying on supernatural reasoning, if the story is explained to them sympathetically, a classic example of subject positioning.

Finally, no film has captured subjectivity in the law better than *Judgment at Nuremberg*.<sup>29</sup> This film captures the essence of the Hart-Fuller debate,<sup>30</sup> which portrayed the great difference in thinking of two renowned jurists on the Nuremberg trials. In the film, when the defense lawyer makes his closing speech, it is presented in the form of rhetoric. This brings in the open-endedness to the film to a person even from a non-legal background, as most questions are directly posed to the audience, from the camera-placement. Moreover, most of

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<sup>27</sup> *INHERIT THE WIND* (Produced by Stanley Kramer 1960).

<sup>28</sup> *THE EXORCISM OF EMILY ROSE* (Lakeshore Entertainment et. al. 2005).

<sup>29</sup> *JUDGMENT AT NUREMBERG* (Roxlom Films 1961).

<sup>30</sup> H.L.A Hart, *Positivism and the Separation of Law and Morals*, 71 *HARVARD LAW REVIEW* 4, 1958, 593–629, and Lon L Fuller, *Positivism and Fidelity to Law — A Reply to Professor Hart*, 71 *HARVARD LAW REVIEW* 71, 1958, 630–672.

the trial scenes are filmed with the camera being placed between the two judges. This gives the spectator the illusion of being the third judge, whose decision is also awaited. Through this technique, the filmmaker questions the well-established beliefs of the audience.

### **Conclusion**

In the course of this paper, I have analysed how the medium is an effective mechanism of telling half the story, while leaving the rest for the spectator to finish. I have established that the viewer subject will have a different opinion on a single film or issue merely based on the social group to which she may belong. I have also shown that, analogous to legal jurisprudence which has many schools of thought analyzing a certain issue, so will a legal film. Filmmaking is truly an art that can only be half done. While an idea may be projected to an audience, the audience's perceptions only can make it whole. This process thus involves not only subjectivity in the filmmakers' choices, but also in the 'reading' position that the spectator adopts, according to her personal interpretation of the text. Hence, it cannot be stressed more that Law and Film studies need to focus more on the viewer subject, as she is no longer just a viewer subject, but a legal one. This could be done by studying the reactions of audiences across a wide demographic, or contrasting the treatment of a legal film in a common-law nation with that in a civil law nation. For instance, a film on World War II may find different reactions from Germany as compared to India. Similarly, a film akin to *A Few Good Men* may find varying reactions in a heavily militarized country like North Korea, as opposed to a nation like Japan. However, this is not to say that results may be homogenous. There might be varying trends within countries. Hence, this would also bring to the forefront not only the audiences' relationship with the law, but also underlying issues of gender, race, and class. Hence, for a full-fledged understanding of films and their impact on the law and vice versa, we ought to go past the filmmaker in film and law studies, and delve into how it is received as well.