

Media essays - media fiction fact



**ASSIGN
BUSTER**

Media Fiction Fact

' Media portrayals of law, be they fiction or fact, are inevitably distortions of reality'. Discuss with reference to the module's readings and, if relevant, illustrate with specific examples drawn from the seminars

Introduction

' I think we can say that the public's attitude to the criminal justice system is greatly, probably dominantly, affected and influenced by what they read in newspapers, hear on radio, watch on television and, now of course, see on the internet. In other words the media'. As the noted legal journalist, Marcel Berlins explains, the media has become a powerful and significant source of legal information and a means by which individual perceptions about the law are formed and shaped.

The concern however, is that the media is also capable of persuading people to adopt and endorse notions about the legal system that are based on ' misconceptions, false facts or prejudice'. By using various images and sounds the media is able to influence the public's reaction to legal issues, and convince the public to accept the media's distorted perspective.

The question then becomes whether all media representations are a distortion of reality or whether the media is also capable of accurately portraying the law. Information and representations become distorted when they are presented in a manner that is misleading and inconsistent with their original form. The case of Caesar Barber is a clear illustration of media's ability to present the law in a manner that falls within the definition of distortion.

Caesar Barber commenced a class action lawsuit against various fast food restaurants for failing to inform the public about the harmful risks associated with the consumption of fast food. Although, the aim of the lawsuit was to raise public awareness and attempt to make large corporations legally accountable for their ‘pervasive deceptions’, the media, in an attempt to attract readers, used various tactics to undermine the importance and socio-legal implications of the case. Various newspapers and reputable journalists used catchy phrases, humorous pictures and witty headlines to give the story an entertainment quality and create market value.

According to some commentators, the media must resort to these theatrical antics and dramatic techniques in order to retain its ‘mass appeal’. As Margaret Thornton notes, the media are forced to present distorted images of the legal system in order to secure ratings and retain its power and influence over the public: ‘Accurate portrayals, such as the American TV series, *Paper Chase*, which was located in a law school, have had to be withdrawn because of their unpopularity.

Similarly, the exploration and explication of legal doctrine are considered to be too dull and complex for popular media’. Thus, as a business, the media responds to market pressures by employing various tactics to attract consumers including using misleading headlines and false images to incite emotional responses.

It is precisely because the media picks and chooses what to focus on, that they inevitably misrepresent the law and blur the line between fact and fiction. Events are defined as being fictitious if they are untrue, imaginary or

based on a false belief. Although the term 'fiction' is usually equated with the imagination, fictitious events can include real people and experiences, but are primarily viewed as a form of entertainment.

In contrast, a fact is usually equated with truth and reality and is defined in law as 'a thing that is indisputably the case' or 'the truth about events as opposed to interpretation'. The distinction between fact and fiction is fading as reality is becoming more fictionalized through the media's use of narrative devices such as metaphors. It is the media's ability to present their version of the story in a realistic manner that makes it difficult for the public to discern the truth.

Although there is strong support for the argument that 'media portrayals of the law, be they fiction or fact, are inevitably distortions of reality', the real issue is whether this is indeed a cause for concern. Many media critics are concerned that the media will inevitably undermine the public's confidence in the judiciary, lawyers and the legal system.

This anxiety is founded on the idea that the media is the chief or sole source of legal information, and that audiences are incapable of resisting media influences in formulating their opinions about the law. The aim of this paper therefore, will be to explore the relationship between the media and the law, and examine the ways in which the media distorts the law through representations of reality based on fact and fiction. The last part of the paper will be devoted to examining whether or not the media's ability to misrepresent the law is indeed as problematic and worrisome as it first appears.

Relationship between the media and the law

The media and the law are inextricably linked in a number of ways. Firstly, the media is the subject of legal discourse. Lawyers, judges and policy makers are constantly involved in the regulation of different forms of media such as the radio, television, newspapers, and the internet. Media regulation has become an important legal issue and attempts have been made to develop rules restricting media content and to determine who should have control over the production of media forms.

Secondly, the law and media are connected through media communications about the law and legal events. Whether it is an advertisement for a law firm, a reality courtroom programme, a newspaper article on a current legal event, or an internet blog on a controversial legal issue, the media is a constant source of legal information. Although the law is probably most visible in highly institutionalized places such as the courts, law firms and police stations, it is also present through media representations of crime and justice.

It is through media portrayals of law that the relationship between the law and media manifests itself. As Sheila Brown states , ' By depicting the processes of law and justice within the dramatic conventions of reality TV, courtroom soap opera, the voyeurism of human interest, and the aesthetics of visibility, media culture and the law sometimes appear to become indivisible domains'.

The relationship between the media and the law is further strengthened by the fact that both are present in our everyday lived experience. A common

sense approach to understanding the concept of the 'everyday life' suggests that it is 'the routine act of conducting one's day-to-day existence'. Based on this view, the everyday is simply a representation of individual experiences that impact on the formation of one's opinions and identity.

Since the everyday life is interwoven into human experience it is both patently obvious and hidden because it is often 'taken-for-granted'. As Austin Sarat and Thomas R. Kearns note, quoting from Schutz and Luckmann's *Structures of the Life World*, 'The world of everyday life is consequently man's fundamental and paramount reality...It is the unexamined ground of everything given in my experience...the taken-for-granted frame in which all the problems which I must overcome are placed'.

The law is representative of the everyday life because it is an integral part of our daily routine and plays a significant role in various aspects of our life such as our family, career, community and education. From filing for divorce, to claiming sexual harassment in the workplace, or to suffering an injury at the hands of a drunk driver we encounter the law on a daily basis in its various shapes and forms.

It is precisely because the law is an integral part of our every day experience that it becomes a dominant source of knowledge that 'helps shape experiences, interpretations, and understandings of social life'. However, because the law is a component of one's daily routine and habits, people are generally unaware of the law's influence over their daily experiences and conceptions of social life.

The same principle can be said to apply to the media. Like the law, the media penetrates our daily lives, helps formulate our understanding of social reality, and its influence and power in shaping individual perceptions of the world is frequently ignored. Thus, the media are often viewed as both entertainers and an 'agents of socialization' who play a significant role in shaping the public's understanding of the law and legal processes.

As a dominant source of legal information, the media is often viewed as the primary means by which the law is able to become a part of the everyday life. The media educates the public about lawyers, judges and criminals and provides its own perspective on what the law is and how it works. It is the media's ability to 'teach us about 'the law'' that has led legal scholars to critically examine the relationship between the media and the law. The concern is that the media's use of sensationalized headlines not only misinforms the public by presenting distorted images of legal reality but also undermines the public's confidence in the legal system.

Media distorts legal reality

On January 25, 2007, one of the BBC news headlines read, 'Risk of suffering crime 'rises': The risk of becoming a victim of crime in England and Wales is rising for the first time since 1995, figures suggest'. Anyone reading this headline would automatically be under the impression that, according to official figures, crime is on the rise and is a serious issue in England. The problem with this headline and other newspaper reports about crime is that it does not accurately reflect the reality of criminal behaviour.

Statistical evidence produced and gathered by the Home Office indicates that contrary to the BBC report, 'violent crime has fallen or remained stable since 1995'. Furthermore, any rises in crime can be attributed to procedural disparities arising from the number of crimes reported and recorded by the police in any particular year. Although the text of the BBC article makes reference to these findings, noting that the increase in crime is still lower than the total percent recorded in 1995, this information is contained further down in the text of the article.

Thus, the large number of readers who merely skim newspaper headlines will be misled into thinking that the general level of crime in England is increasing. This suggests that what the media chooses to focus on can give rise to public misconceptions about the criminal justice system. The question then is if the media has such a large impact on people's perceptions about the law, then why do they insist on distorting representations of crime?

People generally use their spare time to engage in activities that are both relaxing and fun and that help them unwind from the stresses of everyday life. During these leisurely moments, people generally watch television, listen to the radio, surf the internet, or read the newspaper.

In this way, the media is often viewed as a pastime, as both a source of entertainment and a means by which one is able to distract oneself from the complexities of life. As McQuail states, 'The media are often sought out precisely as an alternative to and an escape from reality'.

What people seem to forget during their leisurely pursuits is that the media is still a business, whose primary goal is to sell the product of entertainment

and information to its consumers. The media is subject to various market pressures and as such its principle objective is to generate profits by using a variety of techniques to attract consumers. Since the media's principle objective is to sell its product, the media is not focused on representing a true pattern of what is going on in the world.

As was seen with the BBC news headline, the media use various marketing tools such as sensationalized headlines to attract its audience. Events are only reported in the media if they resonate with the public and attract viewers. As is noted by McQuail, " The simple fact that the mass media are generally oriented to the interest of their audiences as ' consumers' of information and entertainment can easily account for most of the evidence of reality distortion...' .

A clear example of media distortion is the fact that the press only concentrates on a small number of criminal offences which include serious crimes such as murder and sexual assault or celebrity crimes. As is noted by Thornton, ' The dramatic potential of criminal litigation is overwhelmingly preferred, in which everything is biased and distorted for dramatic effect. Within the crime show genre itself, violent crimes are disproportionately over represented' .

Although these types of cases matter, they often leave the viewer with misconceptions regarding the general level of crime. The recent British Crime Survey indicates that in 2006/2007 the total number of domestic burglary crimes reported by the police was 292. 3 thousand compared to the

19. 2 thousand reports of crime that constitute serious violence against the person such as homicide or serious wounding.

Although the threat of being a victim of burglary is higher than that of homicide, the media tend to focus its reports on violent crimes because the seriousness of these types of offences triggers an emotional response in the viewer thereby increasing media productivity and profits. This type of slanted reporting leads the public to grossly overestimate the amount of serious violent crimes, in relation to all other crimes.

As Berlins notes in his lecture, ' I suppose what I'm saying is that the media, in its totality, does - probably irreversibly - convey a distorted view of the state of crime and punishment, that therefore in turn, the public, which takes much of its information as well as its attitudes from the media, holds misguided views on the subject'. Thus, while the media only reports that which will give rise to public emotion, the public, who view the media as a primary source of legal information, uses these reports to formulate their own views about the criminal justice system.

The danger is that this type of reporting will erode the public's confidence in the legal system. As Garapon notes, ' by placing us under the jurisdiction of the emotions, the media are in fact distancing us from the jurisdiction of the law'. Public confidence in the legal system and the judiciary is an important issue. A lack of confidence in state institutions, and in particular the court system, may lead to a form of vigilante justice.

For instance, when Sarah Payne, an eight-year old girl, was sexually assaulted and murdered, the *News of the World's* tabloid made a plea for the

<https://assignbuster.com/media-essays-media-fiction-fact/>

public endorsement of a law that would allow the public access to a sex offender registry. After the tabloid ran this report, vigilante groups began attacking the homes of families they mistakenly believed were pedophiles. Thus, if the public, through media portrayals, is under the impression that violent crime is on the rise or that the courts and police are not doing enough to keep criminals out of society, then they may attempt to take justice into their own hands.

A regular pattern across all research in this area suggests that the majority of the public does not have confidence in the courts particularly in relation to sentencing. Mike Hough and Julian Roberts conducted a study on the sentencing trends in Britain and found that 'judges received significantly more negative evaluations than any other group of criminal justice professionals. The public systematically under-estimate the severity of sentencing patterns, and this is significantly related to attitudes to sentencers'.

This lack of confidence appears to emanate from a significant lack of knowledge about how the system works and the levels of sentencing. Since public opinion about the legal system is influenced by media reports about crime, it would follow that the public's ignorance about the judiciary and sentencing is substantially based on media representations which are largely inaccurate. However, not all media portrayals of the law are entirely unfounded or inaccurate.

As Berlins notes, 'I don't want to give the impression that most people get most of their information and opinions from bad fiction on the telly. After all,

television also gives us some very good, informative, sober documentaries’. However, Berlins goes on to state that while there are accurately depicted representations of crime and justice in the media, viewers tend to not be interested in these shows and they are usually ‘withdrawn because of their unpopularity’.

The Media distorts the law regardless if they represent the facts or fictions

The issue then is whether the media is incapable of producing legal narratives that are based on facts and not fiction. Recently, the *L. A. Times*, a predominant American newspaper, released the story of Mychal Bell’s guilty plea in the ‘Jena Six’ case. In the ‘Jena Six’ case, six black teenagers, including Mychal Bell, were accused of assaulting Justin Baker, a white teenager, at their highschool in Jena, Louisiana.

The media claimed that the assault resulted from a racially-motivated incident at the highschool, where three white students hung nooses from a tree that black students were allegedly prohibited from sitting under. Mychal Bell was the only member of the ‘Jena Six’ group who was charged with attempted murder. Bell’s charges were subsequently reduced and after pleading guilty to a second-degree battery charge he was sentenced to 18 months in prison.

The public viewed Bell’s prosecution as being ‘excessive and racially discriminatory’ particularly in comparison to the way white offenders were treated in similar offences. The *L. A. Times’* coverage of Bell’s guilty plea sensationalized the issue of racism while at the same time omitting relevant facts relating to Bell’s sentence. Although the *L. A. Times* story appears to

set out the true facts of the story in relation to Bell's sentence, they overlook the fact that Bell had a previous criminal record.

Previous convictions on an offenders record is considered an aggravating factor that the court will take into account when determining an appropriate sentence. Thus, as one commentator notes, the *L. A. Times*, in addressing the issue of whether the sentence was excessive and racially-motivated, should have noted that information concerning Bell's previous convictions was a factor in the sentencing decision:

This is a story about whether a criminal prosecution of young black males for a violent crime was too harsh. Any responsible story addressing that topic would fully describe the perpetrators' criminal histories - especially histories of similar behavior. This information is absolutely vital to assessing whether his treatment at the hands of law enforcement was unnecessarily harsh - and by not mentioning his priors, the paper implies to most rational readers that he has no criminal history at all.

Assuming the aim of the *L. A. Times* report was simply to inform readers of recent developments in the 'Jena Six' case, this example demonstrates that by focusing on certain facts, at the exclusion of others, the media is able to create a fictional reality which substantiates its own hasty judgments. A local reporter in Jena, Louisiana, commented on the media's coverage of 'Jena Six' and highlighted several myths reported by the media noting: 'The media got most of the basics wrong. In fact, I have never before witnessed such a disgrace in professional journalism.'

Myths replaced facts, and journalists abdicated their solemn duty to investigate every claim because they were seduced by a powerfully appealing but false narrative of racial injustice'. Among the number of facts the media neglected to report was that evidence given by both witnesses and defendants showed that the noose incident, which took place three months prior to the assault of Justin Baker, was not only a prank against a group of white not black students, but was also unrelated to the attack.

Thus, the media, by picking which facts to report and by drawing unsubstantiated correlations between various facts, have presented a distorted picture of this case. Although, the facts presented by the media in the Jena Six case are in and of themselves true, the manner in which they are presented leads to a blurring of the line between fact and fiction.

It is for these reasons that the media is generally charged with presenting a 'flawed and distorted version of the law'. As Richard Nobles and David Schiff note, 'the media misreads law for its own purposes. This misreading has the capacity to generate what, within the media itself, are described as 'crises of confidence in the administration of justice'.

Distinguishing between fact and fiction has become a difficult task for media consumers. Fictional events are becoming more realistic through various television programs that dramatize the law and the judicial system such as *Ally McBeal* and *People's Court* (UK). These television shows impose a conceptual 'reality' that viewers can identify with.

How then is it possible for a viewer of these types of programmes to be able to distinguish between fact and fiction when the real object of these shows is

to provide neither? According to J. Street, the distinction between fact and fiction is not one that can be discerned by simply watching these shows but is rather a skill that must be learned. The idea that the line between fact and fiction is becoming more and more difficult to discern is not something that is recent or that has emerged with the introduction of reality TV.

The media has always used various tools to impose a certain amount of 'fictionalization' on 'real' issues. In addition to using sensationalized headlines and twisting facts by playing on words, the media also uses metaphors as 'an expression of categories of reality'. Metaphors are used in media crime reporting in order to present complex legal issues in a clear and straightforward manner that makes them more 'real' and easy for an audience to relate to.

Metaphors such as 'justice is blind', 'war on terror', 'cold-blooded murderer', 'lawyers are leeches' and 'if it doesn't fit you must acquit' are used by the media to represent a particular angle on a legal story by relating that perspective to human experience. For example, the metaphor 'lawyers are leeches' will impress upon anyone who has had a negative experience with a lawyer or who has had to pay an excessive amount for legal representation.

The media is able, through the use of these metaphors to paint a certain picture for the viewer that they are able to connect with because the 'values and emotions' attached to these metaphors resonate with the everyday. As Brown notes, 'What gives such metaphors their resonance is not actually their 'distortion' of reality; it is their proximity to experience'. Metaphors,

however, can also distort representations of the truth in crime reporting. For example, the metaphor 'justice is blind' is used to signify the fact that the judiciary is an impartial and independent body whose job is to apply the law equally and fairly to all persons regardless of class, race or gender.

However, what is lost in this metaphor is that justice is not always adversarial and can be achieved through alternative methods to dispute resolution such as mediation and negotiation. Nevertheless, even if the media generates a fictional story, by using metaphors 'taken from the real world' the media is able to connect with the public. As a result, metaphors do not necessarily have to be accurate in order for the media to be able to unite with the public through common experience.

Another way the media is able to connect with the public in disseminating information about the law is by turning 'readers or viewers into judges, providing them with all the material necessary for them to make the judgments themselves'. The facts, legal issues and judgments surrounding court-room type shows are introduced to the viewer as the media sees it and as such, there is no room for mediation, argument or debate.

The media trial is presented in a story-like fashion - like any good novelist, the media tailors the sequence of events and uses characters, imagery, and symbolism to guide its viewers into reaching a pre-determined judgment. By setting the stage and employing various theatrical tools, the media falsely leads its viewers into believing that the outcome of the media trial corresponds with their own opinions about the law and justice. Although the media is able to provide instantaneous justice, by compressing the

complexities of a legal proceeding into a 30 minute clip, the media ignores the fact that ' a trial is an extremely complex and sophisticated device' and that just and fair decisions are reached only through careful consideration of *all* the facts, evidence and testimony.

Thus, media trials have the ability to undermine the role of the judiciary and the public's faith in the legal system, by impressing upon its viewers the belief that justice is easily ascertained without deliberation. Garapon elaborates on this point stating, ' The trial is able to control the way in which the facts are presented, proved and interpreted. On the television, however, a ' construction of reality' is implicit and thus directly experienced - and thus escapes both examination and discussion'. Hence, as Garapon further notes in ' preferring seduction to reasoned argument', the media are able to display a version of the truth ' at the expense of truth itself'.

Although the media's main role is to entertain, the media is viewed by the public as a major distributor of legal information. Since the media uses various dramatic techniques to relate information regarding the law to its viewers, the public is generally unaware that the media simply has no regard for whether or not the information they are relaying is true or accurate. It is in this way that the distinction between fact and fiction becomes harder for the public to discern. The public adopts the media's conception of legal reality and as a result views the law in a negative light and loses confidence in the criminal justice system. This is not to suggest that all media content is based on false assumptions or inaccurate facts, but more often than not accounts of the law are misapprehensions of the truth.

Is there a valid reason for concern over distorted media portrayals of the law?

All research in respect of the effect media has on popular conceptions of the law suggests that media portrayals of the law, whether they are based on fact or fiction, present a distorted version of legal reality. As noted earlier, the media's power to distort the law and present fictions as legal truths causes anxiety in the legal community. Again, the concern is that media misrepresentations about the law may destroy the public's faith in the legal system.

The administration of justice and the independence of the judiciary are important values that safeguard the fundamental rights of every individual in society. Without these principles, justice, fairness and equality would cease to exist and society would revert back to a state of war where everyone fends for themselves. The media, as the voice of public opinion, ought to be troubled by the role they play and the influence they have in undermining the public's confidence in the legal system. This is particularly so when examining the media's power over the public from an effects-based approach.

The effects model suggests that media users are like sponges in that they simply absorb media content without any reflection or analysis. This is disconcerting given that some researchers have suggested that information from the media and other sources are absorbed into the mind and filed into 'bins' and that when making 'heuristic judgments', people extract the information from these bins and 'often fail to consider that the information extracted could be from fictitious sources'.

Based on this approach, individuals who have not learned to decipher between fact and fiction, are in danger of formulating erroneous beliefs about the law that are based on stereotypes, half-truths and clichés.

On the other hand, it can be argued that because viewers and readers are generally 'media-savvy' they are cognizant of the media's power to mislead and as such do not rely on media generated content about the law when making value judgments about the legal system. As Lieve Gies notes, 'Most individuals are sufficiently 'media-savvy' to be aware that newspapers and television cannot always be regarded as the most reliable or authoritative sources of knowledge.

People are capable of detecting the media's deceptions and distortions, which means that they are not prepared to put all their eggs in the media's basket'. Thus, instead of 'simply absorbing the televised message like a sponge', viewers and readers are able to 'decode' media communications and attach entirely new and different meanings to the media text. The idea that media users are capable of scrutinizing media content and are actively engaged in the construction of their own reality is based on the active audience approach to understanding media effects on the law.

According to the active audience approach, media users are not merely cultural 'dopes' who submit to the media's power without reflection and examination. A concern raised by advocates of the active audience approach is that media effects studies overlook the fact that audiences are able to maintain their own independence and views when engaging the media.

Instead, research in this area generally starts from the presumption that 'the media is to blame'.

As is noted by David Gauntlett, 'The problem with much media effects research, however, is that researchers have jumped straight to the second stage - investigating the media and its possible 'effects' - without even bothering with the first one, namely checking whether any notable suspects have in fact been affected'.

Stuart Hall's analysis of the media further suggests that any content received by viewers and readers through various media forms is hollow and meaningless until the viewer or reader 'deciphers the text and assigns meaning to it'. Hall's reception analysis model suggests that readers and viewers consciously refuse to give into media influences and instead attach their own set of values to the information being conveyed through media texts.

However, as Gies points out, 'The potential blind spot in reception analysis is that it may still end up giving the media too much preponderance and ignore other influential sources of knowledge'. Nevertheless, the thrust of the argument in both the active audience approach and the reception analysis model is that the media's powers to shape one's understanding of the law will vary depending on the meaning that one attaches to media messages which is dependent on one's cultural perspective - one's class, race and gender.

As is noted by Gies, 'In constructionist analyses of media culture, it is the socio-cultural background of people, and not the media products they

consume, which is seen as a more reliable predictor of how they construct social meaning'. For instance, in Canada, the majority of the images presented on the television depict a Western conception of reality. Since Canada is an ethically and culturally diverse country there are many citizens who have differing cultural perspectives and identities. It is therefore dif