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Dick Wolf Goes to Law School: Integrating the Humanities into Courses on Criminal Law, Criminal Procedure, and Evidence

David Alan Sklansky*

My assignment for this symposium is to discuss ways of integrating the humanities into the core law school courses on criminal law, criminal procedure, and evidence—what you might call the Dick Wolf courses. In one respect the topic is trivial and almost meaningless. It is hard to come up with a sensible definition of the humanities that excludes much of what goes on all the time in a law school classroom: reading judicial decisions, trying to make sense of them, arguing about justice and fairness. We are a little in the position of Moliere’s *Bourgeois Gentleman*, who discovered to his delight that he’d been speaking prose all his life without realizing it. There is another respect in which integrating the humanities into courses on criminal law, criminal procedure, and evidence, while not trivial, is or should be uncontroversial. Precisely because the law addresses philosophical questions and responds to historical developments—and precisely because the law is itself an object of philosophical speculation and is itself a part of history—it is natural to take explicit note of

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philosophy and history in class. It is hard to teach criminal law or evidence law successfully without mentioning Jeremy Bentham. It is hard to teach the right to counsel properly without mentioning the Scottsboro Boys; hard to make *Terry v. Ohio*¹ fully comprehensible without discussing the urban riots of the late 1960s and the Kerner Commission report; hard to do justice to the *M'Naughten* rule without at least touching on Daniel M'Naughten and the Chartists.

I am going to talk about integrating the humanities in a narrower sense: integrating the arts, and in particular literature and the performing arts. It's easier to do this in the Dick Wolf courses than in many other law school classes. Crime, policing, and trials are such staples of novels, plays, movies and television—even aside from the endlessly sprawling universe of *Law & Order*—that it is hard to think of much literature or dramatic art that *doesn't* touch, at least in passing, on criminal justice or trial procedure or both. Popular music, too, has a tendency to return again and again to issues of crime and punishment.

It is easy to see why. The detection and suppression of illegality is inherently dramatic, and it tends to raise, in sharp and pressing ways, fundamental questions about morality, truth, and the human condition. So artists, storytellers, and songwriters have been drawn to crime and punishment at least since the writing of the Book of Genesis. And it is natural for anyone discussing these subjects to turn to the humanities for inspiration and illustration, whether it is Lord Coleridge in *Regina v. Dudley and Stephens*² quoting *Paradise Lost* or a twenty-first-century evidence professor illustrating the hearsay rule with a scene from *Anatomy of a Murder*.

The challenge is not how to find occasion to introduce the humanities into a course on criminal law, criminal procedure, or evidence. The challenge is how to do it right: how to use materials from the humanities to sharpen or to deepen these courses, instead of just wasting time or, worse, derailing class discussion.

Part of the answer is to be selective: to keep allusions short and to the point, mercilessly editing down any clips you show in class, and paying attention, in choosing materials, not only to the legal issues they raise or help to illuminate, but also to what other issues, emotions, or concerns they may raise. Don't use *Philadelphia* to illustrate a hearsay exception, for example, unless you're comfortable spending a fair bit of class time discussing the AIDS epidemic and the portrayal of gay men in mainstream popular culture.

And there's a more basic point: In order to be selective, and in order to use materials from the humanities effectively, you need to know what you're trying to accomplish. If you're taking the time to summarize *Bartleby the Scrivener* or to play a version of "Long Black Veil," there should be a reason for it. One way or another, it should help students learn something. And it's much more likely to do so if you're clear about what you're trying to do.

1. 392 U.S. 1 (1968).

2. 14 Q.B.D. 273 (1884).

So what *can* the humanities accomplish in courses on criminal law, criminal procedure, or evidence? Here is an incomplete list.

(1) Materials drawn from the humanities can wake students up—and wake up the instructor, too. The late, distinguished historian Eric Monkkonen used to start each session of his undergraduate course on the history of crime and policing by playing a song about crime and punishment—“Stagerlee,” or “Folsom Prison Blues,” or “I Fought the Law”—as the students took their seats. He didn’t use the songs to make any particular point or to motivate class discussion; mostly he just wanted to get the students’ attention before the lecture began. Plus, he thought it was fun: it kept *him* interested.

(2) Literature and the performing arts can provide vivid, concrete scenarios. One of the great things about teaching evidence, and to a lesser extent criminal law and criminal procedure, is that there are thousands of scenes from movies and television shows that can be used as hypotheticals. Sure, you can explore the rules about opinion testimony by making up a story about Wanda Witness and Peter Prosecutor. But a short clip from *Adam’s Rib* will be more compelling, as well as funnier.

(3) The humanities can underscore social significance. One thing that Monkkonen’s songs *did* help to demonstrate was the persistent cultural fascination with crime and punishment, a fascination that in turn reflects, in no small part, the high stakes of criminal cases and the fundamental questions they pose about our values and our common humanity.³ You can accomplish the same thing with Camus, Kafka, or *Columbo*.

(4) Literature and the performing arts can demonstrate the taken-for-granted nature of particular ideas about crime, criminal justice, or the adjudication process—ideas that a course in criminal law, criminal procedure, or evidence may want to question. For example, there’s a wonderful scene of a Klingon trial in *Star Trek VI: The Undiscovered Country*. Part of what’s wonderful about it is how familiar it all is: lawyers questioning witnesses and making objections, a judge ruling on the objections, a group of lay participants acting as fact finders. These are the characteristics, of course, that distinguish trials in the common law tradition from the archetypal trials of the civil law, inquisitorial tradition. I show my evidence students this scene early in the course to alert them to how deeply ingrained these ideas about trials have become in our culture—so deeply ingrained that screenwriters imagining a trial in the distant future conducted by an alien race find it natural to imagine that, despite their many differences from us, the Klingons would employ trial procedures that look very much like ours.

(5) Finally, and perhaps most importantly, the humanities can provide historical context. Legal doctrines about crime, punishment, and adjudication

3. For a provocative meditation on popular music as a point of entry into criminal law and criminal procedure, see PAUL BUTLER, LET’S GET FREE: A HIP-HOP THEORY OF JUSTICE 123–45 (2010).

are themselves cultural products, and it is often difficult to understand them without understanding the historical context in which they arose. Literature and dramatic art can be quick and accessible ways to provide that context. The rape scene in *Gone With the Wind* (a scene euphemistically titled “The Taking of Scarlet” on the DVD) can help students understand how the marital rape exception, a doctrine that otherwise may strike them as incomprehensible, was once so well accepted that even the forward-thinking (but almost entirely male) drafters of the Model Penal Code retained it. The debates that swirled around *People v. Goetz*⁴ are easier to understand if students know something about the way that fear of urban crime in the 1970s and 1980s permeated American culture, especially in New York City, and lent itself to a romantic view of vigilantism. Showing students the movie posters for *Death Wish* and *Escape from New York*, and telling them something about the concepts of those movies and their extraordinary popularity, can give them a point of entry into a world most of them are too young to remember. (To drive home how strongly these movies reflected and reinforced the cultural focus on urban crime, I also show them the cover of *Time* magazine picturing Bernhard Goetz stepping out of a subway station, in a composition strikingly similar to the *Death Wish* poster.⁵)

As the *Goetz* case illustrates, popular culture is not just a window into the historical context of crime and punishment; it often is itself part of that context. The *Goetz* case is far from the only example in criminal justice of life imitating art. The cultural fascination with crime, policing, and trials doesn’t just result in lots of novels, movies, and television shows about those subjects; it also means that artistic depictions of criminals, victims, law enforcement officers, lawyers, judges, and jurors often wind up shaping how the real-life expectations and aspirations of people who work in the criminal justice system or find themselves caught up in it. Real-life gangsters have been fans of their fictional counterparts since at least the 1930s.⁶ Correctional officials and legislators have invoked the fictional serial killer Hannibal Lecter to explain the need for “supermax” facilities.⁷ Debates about investigative tactics in terrorism cases often drew on *24*.⁸ It’s unclear whether the *CSI* franchise has really made jurors less inclined to convict in cases without forensic evidence, but it wouldn’t be surprising.⁹ In all of these cases, the humanities aren’t just a way to understand

4. 497 N.E.2d 41 (N.Y. 1986).

5. See TIME, Apr. 8, 1985, available at <http://www.time.com/time/covers/0,16641,19850408,00.html>.

6. See, e.g., KEVIN STARR, THE DREAM ENDURES: CALIFORNIA ENTERS THE 1940S at 251–52 (2002); JONATHAN MUNBY, PUBLIC ENEMIES, PUBLIC HEROES: SCREENING THE GANGSTER FROM LITTLE CAESAR TO TOUCH OF EVIL 55 (1999).

7. Keramet Reiter, The Most Restrictive Alternative: The Origins, Functions, Control, and Ethical Implications of the Supermax Prison, 1976–2010 (unpublished manuscript, 2011).

8. See, e.g., Jane Mayer, *Whatever It Takes*, NEW YORKER, Feb. 19, 2007, at 68.

9. Compare, e.g., N.J. Schweitzer & Michael J. Saks, *The CSI Effect: Popular Fiction About Forensic Science Affects the Public’s Expectations About Real Forensic Science*, 47 JURIMETRICS 357 (2007), with, e.g., Simon A. Cole & Rachel Dioso-Villa, *Investigating the “CSI Effect” Effect: Media and Litigation Crisis in Criminal Law*, 61 STAN. L. REV. 1335 (2009).

the criminal justice process; they are part of that process. So there really are two reasons to incorporate the humanities into law school courses on criminal law, criminal procedure, and evidence. They're teaching tools (or at least they can be), and they're part of what we're teaching (or at least they should be).