

Book Reviews

THE COMING OF AGE OF EUROPEAN SPORTS LAW?

Sports Law and Policy in the European Union, by Richard Parrish. Manchester: Manchester University Press, 2003. Pp.271, £14.99 (pb), ISBN 0 7190 6607 7.

As the author, Richard Parrish, Senior Lecturer in Law at Edge Hill College in the North West of England, points out in his Introduction, the title to and subject of this book is 'provocative'. Is there such a thing as a discrete body of sports law at the national level, let alone at the European Union level? Put another way; 'what has the Common Market got to do with sport?'

A great deal, as Parrish demonstrates and explains in his timely book. I say timely advisedly because, despite there currently being no legal basis for regulating sport in the existing EC Treaty, in the last 25 years or so, the EU has been active both legally and politically in the sporting arena, culminating in the famous or infamous, depending on your point of view, Bosman ruling by the European Court of Justice (ECJ) and the comprehensive Nice Declaration on Sport of December 2000. Both of these significant milestones, including the subsequent Balog and Kolpak cases which apply the Bosman principles, are fully documented and discussed and also put into the context of an emerging EU sports law and policy. Likewise, with the enlargement of the EU from 15 member states to 25 on 1 May 2004 and the ongoing discussions for a new treaty to take account of this, it is possible that it may contain a specific provision dealing with the sporting sector. Certainly powerful sports bodies like FIFA and UEFA, who are always ready to assert and preserve their autonomy, are agitating for such a move. And the IOC, with similar vested interests, is not a disinterested party either.

Indeed, as sport has become so commercialised, in global terms as an industry sport is reputedly worth more than three per cent of world trade and in European terms it accounts for 1.5 per cent of the combined GNP of the existing 15 member states, the EU has had to take account of this and reconcile two potentially conflicting policies: regulating sport as a business, especially under the Competition Rules; and developing the cultural and social aspects of sport as a political instrument, in furtherance of its Policy on a People's Europe. But as the author rightly points out: 'Today, the regulatory and political policy strands of EU involvement in sport relate to one another in a more co-ordinated manner'. And this trend is likely to continue in the future and be further developed in, as yet, unknown but exciting and challenging ways to the sporting world.

Apart from looking at the future of EU sports law and policy in a final chapter, which I found most fascinating, there are also insightful chapters charting the birth of an EU sports law and policy; the relationship between sport and the ECJ; sport and EU competition law; and the possibility of sport being exempted from EU law. As for the latter issue, UEFA is reviving its campaign for a special Protocol on Sport, but it is not yet clear whether the political will, which was lacking at Nice, now exists to make this feasible. Throughout the text, there are copious references to relevant cases, official

EU reports and publications, books, articles and other useful materials for further reading and research, as well as a short, but adequate, index.

All in all, this is a most interesting and thought-provoking book, which is published as part of the Manchester University European Policy Research Unit series of advanced textbooks and thematic studies of key policy issues in Europe. And a very welcome addition, not only for academics but also practitioners, to the existing and growing body of literature on sports law, the fact of which the author cites as an argument for claiming that sports law has now come of age, a hot topic that has been debated in the columns of this Journal, and must be taken seriously as an academic discipline and area of legal practice in its own right. This will not please the 'sport and the law' protagonists.

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SOMETHING OLD, SOMETHING NEW

Law and Film, edited by Stefan Machura and Peter Robson. Oxford: Blackwell, 2001. Pp.176, £15.99 (pb), ISBN 0 6312 2816 0, published simultaneously as *Journal of Law and Society* 28/1.

Machura and Robson's edited volume offers a collection of 12 articles that reflect both already well rehearsed and familiar themes and arguments in law and film scholarship as well as articles that make new and innovative contributions to that growing body of work. The themes that connect the articles put this collection firmly within the now established orthodoxy of law and film legal scholarship. The first, and most dominant theme, associates the law film with representations of criminal trials, which are characterised as 'courtroom drama'. Classical Hollywood cinema and the American way of law dominate.

The second theme is images of the legal profession. In this collection there seems to be something of an obsession with John Ford's *The Young Mr Lincoln* (1939), which makes an important appearance in five of the 12 articles in the volume. A third theme evidences something of a fixation with classification and taxonomies. Here the organising principle seems to be to invent and police a film genre for law scholars, be it 'the law film', 'courtroom drama' or 'trial films'. For example Nicole Rafter offers us an historical analysis of film sub-groupings (experimental/law noir; the heroic tradition; the decline of the hero) within a sub-division (criminal trial films) of the more general category, 'trial films'. Matthias Kuzina's article begins 'tentatively' with ten sub-divisions of 'the courtroom genre' prior to exploring one, 'social issue courtroom drama', in more detail. Even when authors stray beyond the United States, a preoccupation with categorisation remains. Peter Drexler, for example, offers five sub-categories of *Gerichtsmilieu*, German law films. A fourth point of connection between the articles is a concern with film not so much as a visual medium but as narrative.

Guy Osborn voices one of my main criticisms of the volume in his article in the collection, 'Borders and Boundaries: Locating the Law in Film'. There he notes, 'considering law films as only courtroom dramas is a very narrow interpretation of what law is concerned with' (p.173). It does seem a little odd to find Osborn's

welcome and important comment in the final article of a collection dominated by articles that focus on courtroom drama. Perhaps a more accurate title of the volume might be 'Courtroom Drama' rather than the more generous title of 'Law and Film' used by the editors.

However, this is not to suggest that there is nothing more to be done in relation to work on courtroom drama. Nor does it suggest that work on courtroom drama cannot offer insights that might have importance in the context of a more generous definition of the parameters of work on law and film. Jessica Sibley's article in the volume, 'Patterns of Courtroom Justice', is a case in point. It echoes some of the main organising themes of the volume, in particular a focus on courtroom drama and a concern with crafting a genre, and at the same time takes us well beyond the limits of the confining orthodoxy commonly found in association with these themes. One innovation is to be found in Sibley's concern with representations of something more abstract than courtroom interactions; an ideal of justice. Another is in her engagement with film aesthetics and film technique. She offers a useful insight into a range of visual figures, such as golden domes against piercing cloudless blue skies, lofty buildings dwarfing the human figures, tortuous labyrinthine hallways, through which 'law's relation to justice' is made in 'establishing-shot' sequences in trial films. Her article also begins to explore the significance of the technology of cinema, in particular the camera, in the production of a popular experience of law, drawing attention to the role of the zoom, close-up, panning shot and so on in the fabrication of justice as a visual experience.

The volume also hints at other new avenues for work that engage more rigorously with film scholarship. Peter Robson's article on the adaptation of law novels for the silver screen is a case in point. It is, however, a pity that his article focuses primarily on the narrative and changes in the narrative that take place in the process of translation from one medium to another. In mapping these changes he misses a golden opportunity to explore the distinctive impact of visualisation in general and the visual modes and techniques of cinema in particular upon this transformation.

Another important innovation in this collection is in the way the contributions made by a number of German scholars, particularly in articles by Peter Drexler and Stefan Machura and Stefan Ulbrich, draws attention to the usually unmarked parochialism of the American way of law and Hollywood as a national cinema, albeit with global impact, that dominates law and film scholarship. Machura and Ulbrich expose and explore the jurisprudential and cinematic idiosyncrasies of Hollywood courtroom drama by putting that cinema in the context of a different legal tradition, that of a civilian legal tradition, with its different institutions and procedures. They explain the viability and cultural dominance of popular representations of an alien (American) legal culture in a different (German) context by reference to the (natural?) dramaturgy of the adversarial system. While Peter Drexler also resorts to this argument his analysis of the rise of German courtroom films during the Weimar and Nazi periods suggests, in the final instance, that Machura and Ulrich's position is problematic. Drexler's analysis suggests that the structure of the civilian legal tradition, more specifically of the inquisitorial courtroom process, is not devoid of drama. However the inquisitorial process may place the dramatic moments in different locations and in different personnel from that associated with the adversarial tradition, for example in the figure of the judge or in the mind of the accused, rather than personified by the advocates or in the cut and thrust of cross examination. Drexler's data offers a challenge to Machura and Ulrich's assumptions about the dramatic essence of the adversarial system and suggests that more work needs to be done to explore and

explain the historical and contemporary cultural dominance of the adversarial mode of law in popular culture. One glaring omission from the analysis of the dominance of Anglo-American models of law in other national and cultural contexts is the absence of any analysis of the political economy of Hollywood cinema as a global commodity and an economic force currently without equal.

At its best, this volume opens up some new questions for law and film scholars. Raising questions about the political economy of cultural politics in both national and international contexts, engaging more seriously with a wider body of film scholarship that deals with the specifics of the medium of the message, are important challenges. They not only point to the potential that is yet to be realised in work on law and film but they also point to the importance of a multi-disciplinary approach to law and film.

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TEACHING WITH LEGAL FILMS

Film and the Law, by Steve Greenfield, Guy Osborn and Peter Robson. London: Cavendish Publishing, 2001. Pp.243, £35.00 (pb) ISBN 1 859 41639 X.

It comes as no surprise that Taylor Hackford's *The Devil's Advocate* should feature Satan, played by Al Pacino, as a lawyer. The cinema-going public would accept no less from a profession that, deserved or undeserved, has certainly not had a starring role on the side of the angels. More recently, *Changing Lanes* featured Ben Affleck as a young, upwardly mobile lawyer totally lacking in either scruples or professional ethics. Does this matter? As the authors ask, 'Put simply, do "anti-lawyer" films make or contribute towards "anti-lawyer" attitudes in the cinematic audience?' (p.27). The answer(s) to this question are of interest, both in relation to the study of law as well as of popular culture: the examination of law's dynamic relationship with popular culture contains much that can be useful. The authors' attention, however, is much more focused on legal theory and law-teaching. As they point out in the first chapter, the intersection between law, film and popular culture has much to reveal about the manner in which law may be taught and understood. The authors make clear that their perspectives are based on the fact that their academic backgrounds lie in law rather than film. However, the examination of their chosen subject matter is sufficiently wide-ranging and their knowledge of the 'law film' sufficiently comprehensive for this text to be of interest also to non-lawyers.

The authors acknowledge a number of problems, two of which may be mentioned at this point. First, their area of concern is narrow; the study of film as opposed to the other media which dominates popular culture. Second, it is the examination of film overwhelmingly dominated by the American film industry. These limitations, however, are largely self-imposed. In particular, the authors decided that television and 'made for TV' film lies outside their purview. This is unfortunate. Television, and the home-viewing potential presented by DVD, has a greater hold than the cinema in matters of popular culture and their reasons for exclusion are unconvincing. Much that the authors have to say in relation to film is equally true of the small screen. That this is so becomes evident in the fact that the authors, despite their self-denying ordinance, do refer on a number of occasions to this particular media. Moreover, given the high number of British television series featuring law and lawyers, coverage of television

and TV film would have been a more than effective manner of dealing with the over-dominance of American film. Similarly, and for obvious reasons, non-English language film has very little role to play in their study.

A further issue arises with the authors' acknowledgement that setting the boundaries of what constitutes the 'law film' remains problematic. They accurately and comprehensively chart with great insight the law film's evolution away from the early 'courtroom drama' to film which accurately reflects the critical lawyers' understanding that law is not just 'court-centred'. Their final definition, if it may be termed a definition, is that: 'In order to qualify as a law film the following characteristic(s) must be present in some shape or form: the geography of law, the language and dress of law, legal personnel and the authority of the law' (p.24).

Could this be sufficient? Determining the proper framework for a 'law film' inevitably requires dealing with the 'what is law?' question, and the authors' conclusions concerning law films' characteristics leads to the exclusion of much film that casts illuminating perspectives on the nature, characteristics and functions of the law. One genre, in particular, that the authors concede is given less extensive coverage is the 'cop film', although the 'private eye' is accorded a whole chapter. While it is true, as they point out, that this has received study elsewhere, it could be argued that the popular perception of law is just as much, and perhaps even more, influenced by films which place the police and criminals at the centre of law (and justice). This is, in itself, intriguing, as the study of law, even of criminal law, accords no pre-eminence, or even any part at all, to the role of the police. It is only rarely that the criminal law syllabus deals with the police inter-dynamic with law and justice. Ironically, to the average first year law student and the general public, constantly exposed to police films and television series, criminal law would seem to be almost virtually police-centred. On the other hand, the authors' analysis of 'celestial' justice, military justice and the futuristic visions of law in sci-fi film in Chapter 2 rightly highlights issues of mainstream interests to legal theorists.

In Chapter 3 the authors raise the issue of authenticity. This is pertinent in the light of the objections raised by those who argue that the element of fiction present in the law film renders them unworthy for proper study. After all, even those films which purport to deal with real events and real cases, the authors deal with *Let Him Have It* (the Derek Bentley case) and *In the Name of the Father* (the Guilford bombings) among others, questions of accuracy and 'editorial' bias have been much commented on. The authors make a controversial point about authenticity. The important issue in these films is the question of justice, or the lack of it, and the critique of the legal system and its manipulation. Accordingly, 'In this sense the question of real life doesn't much matter' (p.74). More importantly, the authors quote Gareth Pierce, the crusading solicitor *In the Name of the Father*, 'All societies have traditions of relating history through drama. There is value in giving an account, however impressionistic and subjective, of a truly appalling story' (p.82).

After all, even the law constructs its own fictions. 'The law is based upon stories. The law reports are full of stories, of documented histories of people's lives and aspirations and how the judicial system has resolved conflicting evidence (stories)' (p.80). It has come increasingly to be recognised by legal theorists that objective facts, even as 'proved' in the court room, may be deconstructed: contrary to general opinion, the 'facts' do *not* 'speak for themselves'. Does this matter? The answer has to be 'only rarely'. The rule that necessity is no defence to murder stands independently of the confusion surrounding the facts in *R v. Dudley and Stephens*; the fact there may never actually have been a snail in the ginger beer bottle has not prevented *Donoghue v.*

Stevenson becoming the cornerstone of the law on negligence. Similarly, the many factual inaccuracies in the 'true' filmic account of the alleged IRA bombers does not detract from the educative and symbolic usefulness of a film such as *In the Name of the Father* in exposing the many appalling miscarriages of justice that have laid bare the hypocrisy of much of the criminal justice system. The fact remains, as the authors point out, 'The power of film to draw attention to issues has a potential to effect social change and individualised justice' (p.83).

Is too much being claimed for the law film? The authors acknowledge that, 'When the discussion of film and its significance becomes enshrined in a language which is impenetrable, then it ceases to serve a purpose' (p.201). While there is much here that may serve to illuminate legal theory and law teaching, there is also a tendency to indulge in unexamined generalisations. While it may be unfair to quote out of context, there are too many sweeping statements, of which the following is but one instance, 'While the television may erode both the relevance and the primacy of the courtroom, the television (and visual technology) is increasingly used within the courtroom both as a source of evidence and conduit of testimony' (p.202). Really?

Practical issues also arise. There are many law films that could be drawn upon in law teaching. The pragmatic argument against their use remains: accessibility, copyright and technology. Many of those law teachers who are convinced by the authors will, nevertheless, fail at these hurdles. It is difficult enough to secure a screening of a classic such as *Twelve Angry Men*; procuring more recent releases may well prove to be impossible.

Despite other criticisms that may be made, it remains the case that the authors present a coherent and persuasive case. Study of the law film can be useful as a tool for critical analysis of law and of justice. This is especially the case when dealing with those legal professionals and those legal issues that are, still, largely, ignored. The authors' conclusions in their chapter on 'The Invisible Lawyers: Women, Gays and Minorities in the Law Film' could equally be made of the law 'enterprise' and of the academy. Similarly, the analysis in Chapter 6 of the 'absent' judge could be seen as reflected in the black-letter law's relative amnesia in relation to the pivotal role played by the judiciary's value judgements and prejudices. In addition, the skills needed to 'read' the law film are the very same skills essential to successful study of the law. In particular, 'there is nothing unique about an approach to the study of law that is fundamentally concerned with interpretation. Primary sources of law, cases and statutes have to be deciphered, and on more than one occasion' (p.190).

While some of the material drawn on by *Film and the Law* has been published elsewhere (the authors' review of this material is in itself laudable), and despite some of the reservations expressed in this review, this text is both radical and ground breaking in its integration of film and legal theory. While it may be true that 'the dominant mode in legal education continues to be the black letter tradition' (p.192), the academy has also accepted a diversity in the materials used to teach this tradition. The authors point out that, 'the progressive focus within the academy has shifted significantly from the structural to cultural' (p.194), and there is no reason why the study of the law film should not follow a similar trajectory to that of the 'law and literature' strand of legal scholarship. In particular, the critical legal studies movement has much to gain from the analysis of the law film. The best accolade that may be paid to the authors is that, since its publication in July 2001, it has as yet no rival.

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