

OJ SIMPSON: MEDIA CONSTRUCTION, HERMENEUTICS, TRUTH AND CRITICAL LEGAL STUDIES

David Newlyn

School of Law, Western Sydney University, Australia

Received: 26 May 2018

Accepted: 30 Jun 2018

Published: 06 Jun 2018

ABSTRACT

Whether you love him, pity him, have distain for him, worship him, revile him or have complete contempt for him, Orenthal James Simpson is infamous. His life provides a microcosm of how Critical Legal Studies can be used to provide a hermeneutical construction of reality. The Critical Legal Studies movement provides for a constructed or hermeneutical theory that purports to challenge accepted preemptory standards in contemporary accepted legal theory and practice. Integral to this hermeneutical theory is the notion of truth. Proponents of Critical Legal Studies indicate that the rationality and structure attributed to the law are constructed from the power relationships that exist in society and from this truth is constructed. But the Critical Legal Studies movement also promulgates that these traditional relationships may not be valid or at least that they may not have been validly considered in the past. In this paper the power that the media exercises as described by the Critical Legal Studies movement is analyzed as it relates to OJ Simpson.

KEYWORDS: *Critical Legal Studies, OJ Simpson, Hermeneutics, Truth, Media*

INTRODUCTION

If it doesn't fit you must acquit.[1]

These famous words provide a somewhat felicitous starting points in this paper. Many would be aware of these well known words spoken by OJ Simpson's lawyer Johnnie Cochran during OJ's trial for murder. It would be trite to say that the name OJ Simpson is known throughout the world. From even before the moment he began his football career, the name OJ Simpson was known throughout at least the United States. As his football, the media and movie career began to develop his fame also increased. It may have reached its zenith at the time he was accused of murdering his former wife Nicole Brown Simpson and her friend Ronald Lyle "Ron" Goldman. What followed was the well documented murder trial, subsequent civil action and then a further trial for the felony crimes of armed robbery and kidnapping finalizing (at least currently) in OJ Simpson being released on parole for these crimes. Throughout this entire period OJ Simpson has been subjected to intense media coverage. Every aspect of his life has been covered and reported by the media. The media has in effect constructed the narrative of OJ's life. That is, the media has not only provided information about OJ's life but it has provided the mechanism by which this information will be constructed. It is the media that has presented an image of OJ Simpson to the entire world. Although this may not be unique to OJ Simpson, it does provide a good example of how Critical Legal Studies, truth, hermeneutics and the media all interact.

BACKGROUND

OJ Simpson does not really exist; he is merely a construction. He may physically exist as a living entity (although we can never really even be sure of this) but the image that we are presented with of this Black American is not a real one. Instead what we are presented with is a contrived and contorted vision. A vision which is not real because we have little say in the way that it is constructed. In the main, we are forced to accept a mediated view of this person.

In this same such way the Critical Legal Studies movement does not exist or at least cannot be adequately defined. Critical Legal Studies may well represent an accepted group of legal scholars and other academics and practitioners who have specific ideas, but it cannot be said to truly exist if these ideas are in anyway different from what others may indeed believe. By necessity these ideas and beliefs will indeed be different. Every human's thought processes are different. The way that individuals ascribe meaning from particular events and situations are different. It is these differences which impact upon perceived, constructed reality. Every person's view of the world can never be wholly complete, but must be by necessity partial and fragmented.[2][3] No person can ever be privy to the entire truth.[4] Truth is an arbitrary and manufactured concept. The only truth which will be relevant to the individual is the truth which they share with others and as such this is not the real truth at all but is merely the truth which people accept as an agreed endpoint or conclusion for the necessary functioning of day to day activities. This then is the truth which is necessary for the functioning of law and order and if we do not accept this truth then these ideas and concepts will fail. Hutchinson exemplifies this situation when he notes:

Behind or underneath the skewed truths and perceived realities of historical living lie the truth and reality of life.[5]

But the practical problem with this is that law depends on the ability of people to accept preemptory norms.[6]

LEGAL NORMS

If law is represented as a concept of hermeneutic or epistemological interpretation then this will result in an abstract interpretation of every person's differing view on what the law is and how it should be administered, both in a day to day manner for the purpose of justice being achieved/delivered and in the future sense of God being the ultimate decider of good and evil.[7][8] Ultimately it may be argued that there is a good and an evil and that laws and justice should be shaped around the enforcement of these ideals. But this too stretches into the realms of metaphysics, because what are laws besides arbitrary constructs of society? Which views are we to trust in the accepting of right from wrong and good from evil? Our whole concept of law and justice revolves around this central tenant yet we are all uncertain as to how it effects each of us. If we choose to take law and order for granted, then society faces a multitude of problems.

CRITICAL LEGAL STUDIES AND REALITY

The development of the Critical Legal Studies movement can be traced back to the actions of particular legal scholars in the 1960's.[9] Its founders were predominantly a group of Angela Saxon, male, middle class, law professors. However, its background can be seen to have developed from the 1920's and 1930's from a legal realists position which had its basis in the works of German social theorists Karl Marx and Friedrich Engels.[10] Hunt notes that principally the turning point for the development of the modern Critical Legal Studies movement was the article *Roll Over Beethoven*[11] written by Kennedy and Gabel. Further, Tushnet identifies modern groupings within Critical Legal Studies to include sub-

groups such as what he terms critical race theorists, political economists, fem-crits and cultural radicals.

So what or who Critical Legal Studies is deemed to be a part of is clearly ambiguous or at the very least open to considerable interpretation and as such it is extremely problematic to talk about Critical Legal Studies with any clearly defined parameters. Indeed Tushnet notes:

Critical Legal Studies is a developing body of thought, and it would be unsound to attempt to freeze it with an absolutely precise description.[12]

Critical Legal Studies exists because we allow it to exist. It could also easily exist as a variety of different sub-groups, such as cultural theories or race and economic analysis of law and people. But it exists as Critical Legal Studies because we ascribe it meaning in this form. In this same such way, OJ Simpson exists as he does, because we allow him to do so.

OJ SIMPSON AND MEDIATED VIEWS OF REALITY

OJ exists, in his many different and varied forms, because we ascribe him a certain form of meaning. Whilst it is true that each person will give him a different meaning, due to many different factors including race and cultural issue, but also based on random arbitrary factors like what that person had for breakfast, the biggest factor which influences our view of OJ is the media. Indeed Critical Legal Studies, argues that we are governed by the institutions that we create, the media being one of the most prominent, and that our lives have little or no meaning outside these contextualisations.[13] This idea is exemplified by Tushnet when he states:

As a form of modernism, CLS argues that our lives are structured by institutions that we create and sustain, and that our lives have no meaning outside those institutions and the processes by which we create them and create ourselves.[14]

Society created the media and the media exercises power. That power is used to construct the reality we are presented with of OJ Simpson. Most of us have never met OJ or are ever likely to meet him, instead we are forced to accept other peoples interpretations of facts and incidents in their determination and communication of information about this person to us.

THE MEDIA AS AN EXAMPLE

There can be little doubt that the media is an extremely powerful body.[15][16] We use the media as a source of information to gain news that we may not have been otherwise exposed to or to find information that we want to be clarified. Hence the media is one of the most important and indeed most effective tools that can be used for the control of both individuals and groups through its ability to influence public opinion.[17] In this same way, the law is used as an effective means of hegemonic control. People accept the rule of law and its consequences because it is imposed upon them.[18]

The media is controlled by an elite and powerful group who necessarily become very select in the information that they choose to make the public aware of. Some even argue that this selection is for self-serving purposes.[19] This may be for a variety of reasons, including the fact that the information may hurt their other business interests or simply because certain information and news stories rate better than others; thus they selectively cull the information that they disseminate

and categorize it into what they believe are the mainstream stories/news items. The media appears to be able to polarize the public's opinion of community, facts, and situations. The way the media presents crime[20] to the public is a very good example of this almost hegemonic control.

The almost ubiquitous number and variety of information programmes, radio shows and other competitive news sources including the internet, makes for a great race against time to provide for the best, most enticing, piquant and most noteworthy reports. Time is a crucial element in all of this, as late news is dull or irrelevant news. There is a constant sense of urgency to be the initial and the latest with all fresh material. And implicit in this is the need to attract people not only to your initial story but to follow the story. To build a loyal group of customers who seek out the news from your news source first and foremost. Sensationalism is synonymous with this goal.

As a result of these pressures, what Chibnall terms as, *shortcuts*[21] are often taken and become an inescapable characteristic of the race against time. Shortcuts lead to opportune stereotypicalizations which generally do not reflect the veracity of the factual situation. Instead, they usually feed the iniquitous opinions of the usually, already infuriated, piteous, understanding, or antipathetic public.

Our concept of the media leads to a situation where the media represents a mode of discourse whereby it claims to be able to ascertain the *truth* about a certain situation and about rational behavior and to make the human subject 'knowable'. [22] It is almost as though the ideology of the media conforms to the idea that what is not knowledge today will become knowledge tomorrow. Criminal representations become knowledge from the community at large. The fact that OJ Simpson was a football/movie star provides an added bonus for the media; it both increases the noteworthiness of the story and its rating potential. The media's push for sensationalism propels the public views into one subjectivity when the scrutinized subject pertains to many other different and variant subjectivities and there appears to be an attempt to portray its material as what it considers to be the *truth*, objectively, however incidental or non-essential to the actual reality of the situation. Of course, it would be naïve to suggest that *truth* is not a subjective construct, but in this instance, the media is controlling what information a person can use to construct their own *truth*.

In order to carry through these forms of objectivity and in its push for sensationalism the media's views can easily be seen to be encompassing stereotypical ideals of "racism, sexism and eurocentredness." [23] As a result of its indiscriminate biases, news ultimately mainstreams cultural, libidinous and socio-economic differences into one homogeneous set of knowledge which insidiously becomes the public set of values. [24]

OJ SIMPSON AS A VICTIM

The OJ Simpson case provided the media with a classic opportunity to go into one of their patented frenzies. We have seen this same pattern continually repeated since the media's fascination with OJ. [25] Other examples include George Zimmerman who was a police officer who shot and killed black teen Trayvon Martin in 2012. The murder trial of former South African runner Oscar Leonard Carl Pistorius in 2014 also attracted similar levels of media attention.

But for OJ Simpson, the media was presented with a black man which they had already built up from nothing into a legendary football hero and an aspiring actor who they could now begin to tear down even before he was formally charged with murder. The media made OJ and now they sought to break him. This is a clear example of the media's attempt at hegemonic control.

It did not matter to the media that there may have been more serious crimes that were committed at the same time or more newsworthy stories that were concurrently happening. Instead, the media focused on the rating potential of the OJ story and concentrated on it until its ultimate conclusion (which probably won't happen until OJ's death).

The OJ Simpson story is personified by its ambiguity. Every aspect of the case is somewhat problematic. The media simply present us with one view of the realities of the situation. The suicide note, or apparent one, that OJ wrote provides a very good example of this. In the note, OJ stated that:

At times, I have felt like a battered husband or boyfriend, but I loved her, make that clear to everyone. And I would take whatever it took to make it work.[26]

These comments certainly present a different view of the OJ that the media would have us believe existed. The media, after the murder, presented an image of OJ as the wife beating husband who probably murdered his wife in a jealous rage. Not as the person described in this note who claims he was under a lot of stress and pressure and who was perhaps even beaten by Nicole?

Even though there is some evidence that OJ did in fact beat/harass his wife the media is still a major influencing factor of our vision of this black American. The 911 emergency call on October 25, 1993, illustrates that OJ did have a propensity for violence. This is clear in the following excerpts from the calls transcript:

(Nicole) - My ex-husband has just broken into my house and he's ranting and raving outside the front yard...He's fucking going nuts. (Sobs)...He's going to beat the fucking shit out of me.[27]

And

(Dispatcher) - Has this happened before or no?

(Nicole) - Many times.[28]

What is most interesting is the media's portrayal of OJ before the murders. Early in OJ's career he had clearly been a media favourite. In the 1970's OJ was seen as something of a role model for all black Americans. In a 1976 interview with *Playboy Magazine*, sub-titled 'A candid conversation with the best-liked, best-paid football player'[29], the following was how OJ was described:

Simpson has also emerged as the best-liked athlete in American sport. He rarely turns away autography seekers, shows up at more than his share of charity functions and keeps himself, especially accessible to youngsters.[30]

These comments clearly illustrate the ability of the media to influence the perception of the public. In the 1990's OJ was a black wife-beating husband who may have murdered his wife, but in the 1970's he was portrayed as an all American hero and a model for all Black American's to aspire to.

media for the role that they had played in his downfall. In reference to the media attention he had received following Nicole's death and before he was formally charged, he stated:

(I) can't believe what is being said. Most of it is totally made up. I know you have a job to do (referring to the media), but as a last wish, please, please, please leave my children in peace.[31]

Apparently self aware that the media backlash against him had been building for a very long time. He claimed that

he only pleaded no contest to assault charges from New Year's day in 1989 because he knew that the media would love to get into his personal life. He stated:

I took the heat New Year's 1989 because that's what I was supposed to do. I did not plead no contest for any other reason but to protect our privacy and was advised it would end the press hype.[32]

In addition, he also stated that:

Nicole and I had a good life together. All this press talk about a rocky relationship was no more than what every long-term relationship experiences.[33]

All of these comments illustrate that OJ realized the immense influence of the media. He was aware that they had been crucial to the formation of his career and that they now appeared to be turning against him.

The role of the media in the OJ trial provides a good example of how no meaning is ever fixed; meaning is highly dependent upon contextualisation. OJ Simpson started life as a poor black kid with little or no worthwhile future. Once he showed that first glimmer of athletic prowess the media latched onto him and built his career for him. Without the media OJ would not have reached the heights that he did. The media built him up and then torn him down again. The same can be said for Critical Legal Studies, which had auspicious beginnings in the 1970's but now cannot be adequately categorized into a specific entity.[34]

CONCLUSIONS

Broadly, Critical Legal Studies now stands for any sort of alternative legal thinking, whether that be in a range from an economic perspective to a cultural analysis of the law and all points in between and the way that the law effects people.[35] Critical Legal Studies started out as what Kennedy describes as a "movement or an organisation, not an ideology or manifesto"[36] which linked together certain like-minded people whereas now it has developed into a series of different and unrelated theories or constructs which seemingly could be classed as sub-groups or even separate entities in themselves. OJ's life has similarly been changed and impacted. It has evolved as has the Critical Legal Studies movement. His life story now floats in the ether of space waiting for someone else to write or say something about him which will change the direction of his life is portrayed. His life has been constantly effected and changed by others who interpret and express their own ideas/opinions thus irrevocably changing his life from one thing to another. Critical Legal Studies similarly waits for some person or body to put it back on track. But given that no goal or agenda has ever been expressed for the Critical Legal Studies movement this seems highly unlikely.[37] The Critical Legal Studies movement is certainly subject to change and development as is the continuing story of OJ Simpson.[38] The paper has examined the intersections between media construction, hermeneutics, truth and the Critical Legal Studies movement. It has become evident that the media has used its power base to manipulate the image that has been presented on the life of OJ Simpson.

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