

# A course whose time has come

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Paul R. Joseph

## *Using science fiction materials to teach law.*

Law is a central component of the democratic State. It defines the relation between the government and its people and sets the rules (and limits) of the restrained warfare of politics. Law becomes the battleground for moral debates about issues such as abortion, discrimination, euthanasia, pornography and religion. Today we also debate the role and functioning of the legal system itself. Are lawyers ethical? Do judges usurp the legislative role? Are there too many 'frivolous' law suits?

### **Law and popular culture**

Where do the masses of people learn about the law? What shapes their views? Some peruse learned treatises, others read daily newspapers or tune in to the nightly news. Some watch key events, such as Supreme Court confirmation hearings, live, as they happen. Some have even been to law school. Many people also rely (whether consciously or not) on popular culture for their understanding of law and the legal system. Movies, television programs and other popular culture elements play a dual role, both shaping and reflecting our beliefs about the law.

If popular culture helps to shape the public's view about legal issues, it also reflects those views. By its nature as a mass commercial product, popular culture is unlikely to depart radically from images which the public will accept. By examining popular culture, we, the legally trained, can get an idea about how we and the things we do are understood and viewed by the rest of the body politic. For example, some have argued that as the populace has become more crime-weary, defence-oriented lawyer-heroes such as Atticus Finch and Perry Mason have begun to give way to prosecution heroes such as Sylvia Costas on *NYPD Blue*, Miriam Grasso on *Murder One* or the prosecution team from *Law and Order*. Whether this is an aberration or a trend remains to be seen. Others have noted that lawyer jokes and the use of the lawyer as a negative figure are rampant in television, movies, cartoons, etc. Popular culture has messages for the legal profession, if we choose to listen.

The widespread awareness of popular culture materials can also serve a useful purpose by providing a 'common ground' of shared images from which lawyers and non-lawyers can discuss legal issues. A colleague at another school, for example, regularly uses *Star Trek* examples in his International Law class because, as he points out, his students are more likely to know about Klingons than Croations.

I first began looking seriously at popular culture and law when a colleague encouraged me to present a paper at a popular culture conference. That grew into a law review article, published in 1992, analysing the law in *Star Trek: The Next Generation*.

Over the last few years I have seen that studying law and popular culture can be important for at least three different reasons:

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Paul Joseph is Professor of Law at the Shepard Broad Law Center, Nova Southeastern University, Fort Lauderdale, Florida, USA.

Further details about the Law and Science Fiction Course are available by contacting the author on email: josephp@law-lib.law.nova.edu



- It can show the legal profession how we are perceived by the general public and help us identify problem areas in which the public does not correctly understand an issue (requiring lawyers to educate the public) or areas where real change is needed (requiring law reform efforts).
- It helps to shape the popular understanding of law and the legal system.
- It provides a 'common ground' of shared material which can be a starting point for discussion between lawyers and non-lawyers about the issues of the day.

### Star Trek in law school

Not too long ago I had the opportunity to test whether science fiction could be a productive teaching tool when the undergraduate part of our university invited me to teach a course on law and popular culture. I described the course I would teach to a mixed group of seniors and adult career students this way:

Science fiction creates alternate realities, future possibilities, and alien races. It confronts contemporary problems in futuristic and sometimes fantastic settings. It speculates about culture, morality, politics, and technology. It expresses our hopes and fears about humanity's journey. Through it, we can learn about ourselves and our times. This course presents a critical examination of law, lawyers, and legal systems in contemporary science fiction, including literature, television, and film.

My goals for the course were twofold and, some might say, conflicting. On the one hand, I wanted to focus on the critique of the legal system in science fiction. On the other, I wanted to focus on actual law and legal materials, both to let students experience 'real' law and also to allow them to compare the popular view of law with actual law on the same subject. Thus, for each class, we read and/or viewed science fiction materials but also read legal materials — principally cases and constitutional sections.

When I first began I was concerned that I would not find enough science fiction material dealing with legal issues, but

this proved to be no problem at all. In fact, the problem was cutting down my assignments to reasonable levels. For the course we read three novels, many short stories and legal materials, and we viewed tapes. The three main novels I selected were different in many ways but similar in that all dealt with the issue of authoritarian power versus individual rights.

The first novel was Philip K. Dick's *Do Androids Dream of Electric Sheep*, the basis for the movie *Blade Runner*. If you know the movie, you are aware that androids are illegal on earth and are subject to termination. The story follows the battle between a group of androids who have escaped from slavery and made it to earth and Deckerd, the 'blade runner', sent to terminate them. But the book is much richer. In this post-nuclear-war world it is not only androids who are oppressed. Humans are tested, judged, categorised and stigmatised. Are your chromosomes damaged? Can you reproduce? Has the fallout affected your intelligence? If so, you are banned from the space colonies and relegated to second class status or worse.

The second novel, *Circuit* by Melinda Snodgrass, is an explicitly legal tale in which a newly established federal court is used by the government to regain control of the off-world colonies. Told from a libertarian perspective by an author who is also a lawyer, the book is chock full of legal argument, manoeuvring and court procedure.

The third novel, *Gladiator-at-Law* by Frederik Pohl and C.M. Kornbluth, presents a future dominated by large corporations where those who lose their employment contracts are banished to the slums of Belly Rave. The novel was particularly good for my purposes because it focused on corporate law — an area not often addressed in science fiction. The central struggle in the book revolves around an attempt to seize control of the dominant corporation and to bring down the system of corporate oppression.

The class was taught in eight class sessions of four hours each, so each class generally involved a quiz, discussion of readings and a film or television episode. The first class gave the students an introduction to popular culture studies. We also practised analysing science fiction materials by watching and discussing an episode of *Star Trek: The Next Generation* with legal themes, and by beginning our discussion of *Blade Runner*.

### Legal themes in fact and fiction

From then on, each class focused on a particular legal theme in fact and fiction. I want to share just a few with you: first, the question of what is a person; second, the question of equality, privacy and autonomy; and third, criminal law and procedure.

To be recognised in law as a (natural) person is important because with this legal status come rights under the United States Constitution. Due process of law and equality before the law are reserved for 'persons'. But what makes us 'persons'? Is it our biological existence, that a certain set of atoms was named Paul or Lynn? Is it something spiritual? Is it mental — our ability to think and reason? Or is it something else?

When we started, the students thought the question was easy. They were surprised to find that they had different views.

*Blade Runner* took the position that empathy was key. Androids could be killed with impunity because they could not empathise with others. The irony of the analysis — that the murderous humans have no empathy at all with the androids — is made even clearer when the two pillars of human civilisation, the things which exemplify human empathy — their religion and their television host — are both revealed to be shams.

In 'Measure of a Man', a *Star Trek: The Next Generation* episode, the android, Data, goes on trial to determine whether he is a person with rights or just a machine — the property of Star Fleet. Self-consciousness is held to be the key — and Data has rights.

A different tack was taken in a wonderful short story, 'In the High Court of Justice', where a judge rules that the destruction of your atoms equals death. All those who have used a new matter transmitter device, including its inventor and several heads of state, are declared legally dead.

The various views about personhood were given real-world application because we also examined two cases from the United States Supreme Court. *Dred Scott v Sandford*, perhaps the worst case ever decided, declared that African-Americans, whether slave or free, were not part of the body politic and had no standing in federal courts. The second case, *Roe v Wade*, declared in part that a foetus is not a 'person' under the Fourteenth Amendment.

The discussion of the issue was richer, in many respects, than in my graduate law classes. Part of this can be explained by the willingness of undergraduate students to share ideas and themselves. Some of it can be attributed to the fact that the focus of the undergraduate class was not to acquire a detailed understanding of doctrine, but I believe that part of the reason was the presence of the science fiction materials which provided a context for the legal ones. The readings and viewings were accessible to students and analogies drawn from the science fiction to the law helped them to talk about some very difficult legal issues.

A second major unit was devoted to conflicting goals of equality, privacy and autonomy. A key focus was the idea that we value all of these but that they can conflict. Autonomy of decision making would, for example, permit the owner of the local convenience store to refuse to hire Jews. Equality would require that hiring not take religion into account. Privacy raises the question of how much information he or she can be required to reveal in order to determine what hiring practices the owner was using.

Legal materials included cases on racial discrimination (*Plessy v Ferguson*, *Brown v. Board of Education*) and affirmative action (*Metro Broadcasting, Inc. v FCC*, now overruled but useful for teaching purposes) as well as cases dealing with anti-sodomy laws (*Bowers v Hardwick*), sterilisation of habitual criminals (*Skinner v Oklahoma*) and denial of services to illegal aliens (*Plyler v Doe*).

We viewed a television presentation of *Harrison Bergeron*, a better-than-the-original version of a Kurt Vonnegut short story about a future America where everybody is required to be the same by law and those with exceptional abilities are handicapped in the name of equality.

Other readings included short stories about the establishment of legal rights for all life forms, including those of

the one-cell variety, and essays on equality issues in *Star Trek: The Next Generation*. The assigned materials were so rich that we spent two classes on it.

For our criminal law and procedure class we viewed the film *Outland*, an outer space version of *High Noon*. On a far away mining colony drugs are being used to increase worker output, but the potent chemical eventually drives the workers using it to madness and death. When a courageous federal Marshall stops the drug traffic, the company sends hired killers to eliminate him and the Marshall finds himself alone as the station personnel turn away from him. The film allowed us to discuss police practices and crime control issues.

We also read a short story called *The Reluctant Torturer* in which a future San Francisco, awash in a sea of crime and violence, reluctantly turns to torture to extract confessions from suspected criminals. The torture system is established rationally, not emotionally, and is used as a tool, not an instrument of revenge. Yet, once established, the system inexorably expands until it consumes even the one who had put it in place.

Legal materials consisted of constitutional provisions and selected cases about confessions (*Miranda v Arizona*) and search and seizure issues such as the extraction of blood from a suspected drunk driver (*Schmerber v California*), drug testing (*Skinner v Railway Labor Executives Assn*) and investigative seizures (*Terry v Ohio*).

Other classes focused on the role of lawyers in the legal system, government and international law. The course culminated with student presentations of their final paper topics.

There are moments that stand out for me. One, for example, was a paper written by an African-American woman about her childhood visit to the home of a more affluent white friend. She analogised her feelings to those of the residents of Belly Rave, the outcasts in *Gladiator at Law*, permanently excluded from a nearby world of plenty.

I was pleased that even some students who did not think they liked science fiction were able to see the relevance of the materials to the legal issues. Students saw points we had discussed in the cases reflected in the science fiction and could discuss how accurately the science fiction had or had not captured key legal points.

Science fiction can be a rich source of legal issues and ideas for students to explore. As law and popular culture studies grow, they should not be overlooked.