

TABLOID JUSTICE

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Richard L Fox and Robert W Van Sichel,

Tabloid Justice: Criminal Justice in an Age of Media Frenzy

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[347] The Rodney King beating, the Menendez brothers, O J Simpson, Bill Clinton and Monica Lewinsky, Louise Woodward, JonBenet Ramsey, and William Kennedy Smith. That Australian audiences would be strongly familiar with the mere mention of these names would be reassuring to the thesis postulated by Fox and Van Sichel: that the age of tabloid justice has turned the reporting of the law into any other form of entertainment, all of which are epitomised by these cases.

Tabloid justice

Fox and Van Sichel have coined the phrase ‘tabloid justice’ to represent the shift in ‘mainstream’ journalistic practice from descriptive reporting and sober commentary to a form of practice that instead focuses on the sensational, marginal and personalised aspects of reporting crime-based aspects of law. In this assessment, the authors have not ignored the longstanding interest that exists in sensational trial coverage dealing with the lurid, famous and infamous, citing as examples the Fatty Arbuckle trial in the 1920s and the Lindberg abduction in the 1930s. What delineates the idea of tabloid justice is its impact on the understanding by the public of the legal system, the effectiveness of the criminal justice system, and the capacity for widespread speculative reporting to magnify and distort a fair representation of the law as it applies in the US in the ‘era’ of tabloid justice.

To support a hypothesis that reporting of legally and socially insignificant cases is combined with a sensational style of coverage (with the exception of the underlying problems of the Rodney King beatings and the more significant aspects of the Clinton case) the authors have used the seven cases to test the impact this has had on the

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public's attitude towards law and crime in the US. The corollary of glib and sensationalised reporting has had a marked negative impact on the public's understanding of the legal and justice systems in the US, with correlative impacts on government policy making in respect of those systems. The authors use these cases to test the extent to which tabloid justice [348] has adversely impacted on the wider issues affecting the polity such as public policy, international affairs, and major domestic concerns. From the standpoint of the law, the tendency of this style of reporting is to misrepresent what law is about and how it functions, which is another main theme that runs through the argument about the negative effects of tabloid justice.

Characteristics

The authors have relied upon a fascinating set of materials which document the rise of tabloid justice. Tabloid justice cases are typified by mass coverage via television, and bear the characteristics of serialisation, personification, and commodification. The first is the ongoing nature of the trial or investigation, the second the colourisation of the players in the cases, and the third the packaging of reporting as if it were a form of entertainment programming. It has also been enhanced by the developing new media that both provides for extended opportunities for reporting law and court, such as through cable channels such as Court TV, as well as the use of the Internet. The rise of the form can be traced over a 30 year period to an increased reporting capacity in terms of speed of delivery, accessibility, and the wider capacity of the various media to make space available for this reporting.

The authors observe, through a set of longstanding or intensively reported cases, a change in focus of the reporting of these cases over three periods spanning 30 years from 1968–1998. The first period from 1968–1974, was typified by heavy coverage of Sirhan Sirhan, Watergate, Charles Manson, and Vietnam, among other trials of major public importance. The second period, from 1975–1989 involved a lesser interest in major trials. The third period from 1990–1998, typifying the rise of tabloid justice witnessed an exponential increase in the amount of reporting of the cases studied by Fox and Van Sichel.

From this starting point, the authors then move into an in-depth study of the effect on the public of these cases insofar as they can be found in the mainstream, networked news, as opposed to tabloid, media. The mainstream media — CBS, NBC and ABC — has been the domain of ‘hard news’, not entertainment, and it is this shift into entertainment that concerns them as it relates to its impact on public sentiment and opinion-making. Associated with the development of entertainment is the rise of ‘punditry’ and discussion through ‘news-talk’ on cable, which use experts, including a range of lawyers, to discuss the issues raised through the news. The increased access to court rooms, through television in the court, associated news conferences, and the use of public relations firms to assist parties is the catalyst, in part, for the rise of the content that can fill time on these programs and channels. In comparison, when the access to content was denied, through lack of access to courtrooms by the television cameras, the concomitant coverage was reduced dramatically.

Effects

Fox and Van Sichel are critical of the view that the democratic process is enhanced by ready access to all aspects of information about court processes. The authors cite academics such as Alan Dershowitz and the founder of Court TV, Steve Brill, who argue that any type of access to information about the law and the legal system is a good thing for the democratic process. The authors argue that the opposite is true, as the types of cases that obtain this publicity are so far from the norm that they are clearly unrepresentative of the day-to-day life of the law and the courts. They suggest that the community is in fact misled as to the true operations of a system that instead mostly comprises plea bargaining and short appearances, rather than long-running cases with high-profile clients and lawyers. The consequence is that public opinion established through these cases is formed through, effectively, misleading information.

The authors then set three hypotheses in order to test their argument concerning the impact on the polity of the rise of tabloid justice. Ultimately, the first two are validated by their own survey instrument — public knowledge of and familiarity with the high-profile tabloid trials are extensive, and public [349] exposure to tabloid cases has diminished public confidence in the criminal justice system. The third — that individual levels of news consumption will be correlated to a citizen’s level of

confidence in the criminal justice system — was not borne out by the survey undertaken by them.

Consequences

The over-riding ideal of widespread access to justice, and the principle of open justice, clearly drives the belief that any information about the law is an unqualified good, especially in the context of US constitutional imperatives that drives the belief in freedom of communications. Fox and Van Sickle have raised doubt about the unbridled freedoms that detract from an ideal of well-focussed communications. They have demonstrated that wide access to information at all levels can have deleterious effects, when that information is not used wisely. To this extent, the value of their study for those involved in law is to demonstrate the impact the emergence of this style of reporting of the courts, the law, and the system clouds the general community's understanding of and the functioning of the law and the legal system.

Definitional Problems

The authors are political scientists who rely upon media and communications studies as well as their own discipline's survey techniques. They interrelate this with their strongly and clearly asserted views that they are concerned about the impact of the rise of tabloid justice on the proper functioning of the polity and the legal system. It is in relation to the latter aspect of their argument that Fox and Van Sickle's methodology is not elucidated effectively. They loosely refer to the 'criminal justice system', the law, lawyers and prosecutors, and the legal system without effectively plotting the nature of the 'system' to which they refer. These are never defined or stated plainly. Occasional references to the poor reporting of important constitutional and civil cases indicates to the reader that they are aware of the wider role of the law, but without these occasional references, it would be possible to think that the authors were not sure of their own parameters. References to a partially explicated jurisprudential argument dealing with community fears and concerns rely in part on critical legal studies, feminist legal theory and critical race theory without necessarily considering their full impact on the perceptions and impacts of the law. In the wider scheme, these are perhaps only tangential criticisms in view of the larger impact of their study, which supports perceptions that lawyers may have of negative community

understanding of the matters that the law considers to be of vital importance, especially concerning the nature of trials.

Australia

While it is superficially attractive to transpose Fox and Van Sichel's study as a template to be applied directly to the Australian context, a number of significant caveats should be taken into account. These include the different style of lawyering practice in Australia, the limited use of cameras in court, the far more limited access to programs directly made about court cases, the lack of constitutional protections for such broad-ranging speech, the effect of [350] contempt rules as well as some aspects of defamation. The list could go on.

Another factor that may differ in the Australian context is the extent to which the most extraordinary of cases have formed the stuff of most Australian media, tabloid or mainstream, whether it be Lindy Chamberlain, Ivan Milat, or Ned Kelly. In other words, the sensational is commonplace, and the nature of serious discourse in the American mode, especially for commercial television, is only a fairly recent development.

However, it is plain that Australian media coverage has adopted many of the techniques of the US in terms of the style of reporting of certain types of trials and cases. The recent outcome of speculative reporting of a rape trial in NSW, in which it was asserted that a judge had given lenient sentences on the basis of a guilty plea, which effectively misreported and relied on a limited knowledge of the court process, fits squarely into Fox and Van Sichel's argument. This is not to deny the absolutely horrific situation that the young women found themselves in, but to demonstrate how the situation was fanned by 'tabloid justice'. Information provided by legal experts eventually modified the tabloid response, but not until after community panic and anger about judicial behaviour had reached a fever-pitch. Added to this was the additional factor that the concerns of the complainants had been ignored as it related to claims of racism, as well as concerns about the safety of women in certain parts of

Sydney. That the NSW government responded with legislative initiatives in the light of the outcry completes their hypothesis.²

But that Australians know something about the cases that form the basis of Fox and Van Sickle's study demonstrates another, perhaps more problematic aspect of US reporting in relation to Australian audiences. As this material is packaged as entertainment, for many Australians it is indistinguishable from the fictitious American law programs seen on television, and they assume this is indeed the system that applies in Australia. In other words, the fictive nature of reporting irrelevant US trials and cases in Australia in fact magnifies the effect of tabloid justice in the Australian context, in cases which are utterly irrelevant for Australians.

² See, eg, Australian Broadcasting Corporation, 'Sydney ethnic crime under scrutiny', *Lateline* (22 August 2001) <www.abc.net.au/lateline/s351038.htm>; Australian Broadcasting Corporation, 'Ethnic crime debate', *Lateline* (23 August 2001) <www.abc.net.au/lateline/s351668.htm>; and Richard Ackland, 'Uninformed stunts leave legal system crying rape', *Sydney Morning Herald* (3 September 2001).