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The True Crime Genre: A Positive Influence for Criminal Justice?

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Abstract: The relationship between media portrayals of the criminal justice system, including the various individuals, and the viewing public has often been an area of controversy. This has generally been couched in terms of ‘media effects’. In 2015, Netflix launched the first season of its docuseries “*Making a Murderer*”, which proved both popular and controversial and covered a ‘real-life’ potential miscarriage of justice. Whilst not unique in terms of the subject matter, “*Making a Murderer*” generated widespread debate and audience engagement via social media. A critical review of a true crime case is one example of a programme that utilises the criminal justice system as the subject matter.

This article sets out several key issues. First the obvious expansion of true crime and proposing a system of classification. Second, the underpinning psychology that explains the audience attraction. Finally, it covers some of the issues that have been raised by the portrayal and interaction of new technology with criminal justice, the so-called *CSI effect*. It concludes that the primary issue for the criminal justice system is no longer rooted in technology but rather how programmes may be constructed and presented to the audience.

Zusammenfassung: Die Beziehung zwischen der medialen Darstellung des Strafrechtssystems, einschließlich der verschiedenen Personen, und dem Fernsehpublikum war schon oft umstritten. Sie wurde im Allgemeinen als „Medienwirkung“ bezeichnet. 2015 startete Netflix die erste Staffel seiner Dokumentarserie „*Making a Murderer*“, die sowohl beliebt als auch kontrovers war und einen „realen“ potenziellen Justizirrtum behandelte. Obwohl „*Making a Murderer*“ thematisch nicht einzigartig war, löste es über soziale Medien eine breite Debatte und Publikumsbeteiligung aus. Eine kritische Überprüfung eines wahren Kriminalfalls ist ein Beispiel für eine Sendung, die das Strafrechtssystem zum Thema hat.

In diesem Artikel werden mehrere wichtige Themen behandelt. Erstens die Ausbreitung von *True Crime* und ein Klassifizierungssystem. Zweitens die zugrunde liegende Psychologie, die die Anziehungskraft auf das Publikum erklärt. Schließlich werden einige der Probleme behandelt, die durch die Darstellung und Interaktion

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neuer Technologien mit der Strafjustiz, den sogenannten CSI-Effekt, aufgeworfen wurden. Der Artikel kommt zu dem Schluss, dass das Hauptproblem für das Strafjustizsystem nicht mehr in der Technologie liegt, sondern vielmehr darin, wie Programme aufgebaut und dem Publikum präsentiert werden können.

Introduction¹

Criminal behaviour has historically constituted a significant source for different elements of popular culture whether books, magazines, plays, films or television programmes. Recently music has been thrust into the spotlight in the context of gang crime in England and Wales (Fatsis 2023; Monteith 2022). The Crown Prosecution Service has produced guidelines for prosecutors in this field CPS (2021). Crime fiction is a long-established genre of at least 150 years depending on how it is identified and constructed Scaggs (2005). Books by authors such as Edgar Allan Poe and Dorothy L. Sayers have been a source for adaptations into films and other media. Agatha Christie, a prolific writer of crime fiction, with the creation of legendary detectives such as Miss Marple and the famous Belgium, Hercule Poirot. Her work has attracted interesting critical academic comment indicating her significance (Nicol 2019). It is claimed that Christie is the best selling novelist of all time (The Home of Agatha Christie, n.d). Poirot was the sleuth in the book “Murder on the Orient Express” published in 1934, since adapted for radio, television, film, comics and even games, demonstrating its flexibility. Gill argues that Christie’s incredible success, she is credited as having sold over 2 billion books, is due to more than the mere intrigue of the stories:

“The answer cannot lie simply, as others have claimed, in her uncontested genius for constructing complex plots. Many other Golden Age novelists offered equally good puzzles. Christie’s unique contribution was to create an original fictional world that is both totally convincing and highly unrealistic.” (2016: 13)

Christie’s remarkably durable and successful play “The Mousetrap” has been a global phenomenon translated into 27 languages in more than 50 countries. It originated life as a short radio play “Three Blind Mice” first broadcast in 1947 and was inspired by the true story of two brothers Terrence and Dennis O’Neill (Relax News 2010). Christie’s work shows not just the extremely broad appeal of the well-crafted detective story and indeed its durability over time but also the ease with which the idea

¹ Many thanks to the 2 anonymous reviewers for their kind and thoughtful comments that reflect the warmth and comradeship that has always existed within the cinematic justice community.

can be adapted. Within the medium of film, crime and criminal justice have proved similarly popular and durable. The 1912 short film, “The Musketeers of Pig Alley” directed by D.W. Griffith is a prominent example of an early gangster film. The police, detectives, private investigators, gangsters, lawyers and victims have all featured prominently in one form or another. Greenfield et al. (2010: 47) have argued that films involving criminal justice can be divided into three distinct areas that commence after the crime has been committed. First, there is the apprehension which is essentially the identification of the suspect(s) and their arrest (or not). These can be classified as cop films, or numerous TV series, as they primarily concentrate on the role and function of the police. The second phase that involves lawyers is the deliberation, that may revolve around a trial that itself may be lengthy (“12 Angry Men”, USA 1957) or relatively short (“To Kill a Mockingbird”, USA 1962). The third and final phase relates to the disposition that links to identifiable prison films (e. g., “The Green Mile”, USA 1999, “The Shawshank Redemption”, USA 1994 and “Dead Man Walking”, USA 1995) or a TV series such as “Oz,” (USA 1997–2003). “Oz” ran for six seasons and was a particularly brutal prison drama. The number of episodes did permit the development of a range of story lines and promoted a depth of character (Greenfield 2016). There is of course the potential for overlap, with the three phases, even in films:

‘Prison films may feature an element of wrongful conviction that leads us back to flaws in the disposition stage. The innocent man incarcerated lends a further dimension and features in numerous films. Interestingly there is a line of films around the rogue cop, the vigilante and future law enforcement where the three are merged both within one individual and in a short space of time.’ (Greenfield et al. 2010: 47)

Real life events or stories have always provided a rich source in this field for scriptwriters and Britain has notable examples around miscarriages of justice (e. g., “In the Name of the Father” USA 1993, “10 Rillington Place”, UK 1971, “Let Him Have It”, UK 1991, “Dance with a Stranger”, UK 1985). It is however the emergence of television works, produced for both traditional broadcasters and especially the newer streaming services that have seen an explosion in true crime programmes (Horeck 2019; Walters 2021). Tracing the history back to the late 1980s Walters refers to true crime as ‘a quietly popular television genre’ (Walters 2021: 25). It is argued that the proliferation of true crime from 2014 can be ‘characterized as a startling reemergence for the genre and a bold new wave of true crime content’ (Walters 2021: 26). We are now in a very different era for true crime linked more closely to documentaries and part of the content of the ‘docuseries’ that covers an extremely wide range of different topics; for example the range of programmes offered by Netflix is tremendously broad.

A fundamental reason for the expansion of the true crime genre is the sheer number of broadcast hours that have become available since the development of

satellite and cable television and the rise of streaming services such as Netflix. Simply, there are more hours to fill within a competitive market. Streaming services have also impacted methods of audience consumption with the ability at times to 'binge watch' (Merikivi et al. 2020). It is not yet clear how 'binge watching' may alter audience relationships with a particular programme and the extent to which fascination and intrigue are developed over a shorter timescale.

Some true crime programmes can be made with a minimal budget though more complex cases require additional resources. "Making a Murderer" took two committed filmmakers ten years to produce. It is not just Netflix that has developed and promoted this genre; there is even a dedicated channel, True Crime, described as 'an expert-led documentary and series channel analysing authentic criminal cases with an in-depth journey from the crime scene, through the investigative process to the courtroom. Available in over 24 million UK households, TRUE CRIME is the #1 factual entertainment channel in the UK amongst adult women, and a Top 10 most watched non-PSB channel amongst all adults.' (Sky Media n.d.)

The true crime offering is varied and can be historical such as programmes relating to 'Jack the Ripper' or involve celebrities such as the murder of Jill Dando or high-profile disappearances as with Madeleine McCann. It can extend to bizarre cases such as that of Charles Ingram who was convicted of fraud concerning cheating on the Television quiz show, "Who Wants to be a Millionaire?". His prosecution and conviction led to a book, a play and a three-part TV drama "Quiz" (UK 2020). There is undoubtedly huge audience interest in programmes founded on real life events, the show "Quiz" (UK 2020) attracted over five million viewers for the first episode, and this was a case without 'violence' though it had been played out on a very public forum. At the other end of the crime spectrum, from white collar crime to murder, Season 1 of the groundbreaking Netflix docuseries "Making a Murderer" launched in 2015. It received both critical acclaim (On Rotten Tomatoes it has a rating of 84 % amongst critics whilst on IMDB it has a rating of 8.5/10) and impressive audience figures of over 19 million viewers in the first 35 days. "Making a Murderer" also produced a huge level of proactive engagement beyond passive viewing including the signing of a petition requesting a Presidential Pardon.

Viewing figures indicate the level of audience popularity and intrigue and there is, as noted above, a long history of engagement with crime novels. A fundamental element with all true crime programmes is the fascination of, or the attraction to, the viewer. Put simply why does the audience want to watch true crime programmes? There is no doubt they are popular vehicles to deliver viewer ratings, and the 'reality' provides an additional dimension beyond pure fiction. It also permits the audience to choose sides, most notably guilt or innocence effectively adopting the role of a (television) juror weighing the evidence presented by the writers. The "Making a Murderer" petition demonstrates a level of viewer investment by some

way beyond passivity and this is only one element. Social media provides an opportunity for those interested to initiate or continue the dialogue around guilt or innocence. Humans are naturally inquiring creatures, and the concept of 'curiosity' has attracted psychological study (Berlyne 1954). Curiosity can be defined as; 'the recognition, pursuit, and desire to explore novel, uncertain, complex, and ambiguous events' (Kashdan et al. 2018: 130). Whilst perceptual curiosity has been defined as a '...driving force that motivates organisms to seek out novel stimuli, which diminishes with continued exposure. It is the primary driver of exploratory behavior in non-human animals and, potentially, also in human infants as well as a possible driving force of human adults' exploration.' (Kidd & Hayden 2015: 450).

Knobloch-Westerwick and Keplinger (2009: 194) argue for the need to differentiate the mystery genre which is not synonymous with crime dramas as the latter 'focuses on the depiction of the crime proper or on achieving justice, for example, in a dramatic court trial'. Thus 'mystery deals with the solution of an enigma, especially with identifying who is guilty of committing specific, previously unresolved criminal acts. Usually, the crime has already been committed when the story begins or occurs in the story opening, and the mystery plot typically ends with a confrontation of the culprit with compelling evidence' (Knobloch-Westerwick & Keplinger 2009: 194). This is undoubtedly the case when strict lines are drawn but as genres or categories have become blurred programmes such as "The Jinx", (USA 2015) or "Making a Murderer" (USA 2015) contain elements of both mystery and crime drama and may extend to punishment. Miscarriages of justice contain all elements, in addition to the crime there is the mystery as to who the 'right' perpetrator is and the injustice against the potentially wrongly convicted adds an extra emotional layer to draw in the audience.

Knobloch-Westerwick and Keplinger (2009: 209) argue that the element of mystery impacts upon impression formation with respect to the introduction to the reader or indeed viewer of the main characters who may be perceived as a 'goody' or 'baddy'. However, in the mystery plot: 'each of the suspects is examined in great detail, and impressions of each suspect may switch with each presented clue. Clarity about the "true characters" of the cast members is not reached until the mystery is resolved'. This process of developing 'audience loyalty' can be clearly seen in programmes such as "Making a Murderer" (USA 2015) as more evidence is unravelled. This process is ongoing and dynamic and may be spread not just across episodes but also seasons. Understanding the role of 'mystery' concerning viewer engagement is an important aspect for film makers to incorporate. Goldman (2011) has similarly explored the dynamics of the mystery novel and there is a serious point as to whether similar ideas and concepts apply to different media. Viewing is a different mode of consumption even if the parameters of the genre are similar. Arguably the question of value used by Goldman applies equally to visual media that have serious rather than frivolous content: 'the value of a work is measured by

its capacity to engage fully and simultaneously all of our mental capacities – cognitive, emotional, imaginative, and perceptual’ (Goldman 2011: 263). In the classic mystery scenario, there is an end solution and the desire to reach this point drives the cognitive dimension. The viewer/reader is tasked with interpreting the events through the narrative journey. However, in some of the true crime offerings, there is no ‘correct’ outcome but rather uncertainty, the mystery is ongoing which may be frustrating. This was the case with “Murder at the Station” (UK 2016) where it transpired potentially crucial evidence had been destroyed leaving the convicted killer with no redress. It also left viewers without a conclusion either way – the ‘did he – didn’t he’ remained unsolved. This is intellectually frustrating as if the appeal of the mystery is to solve a cerebral puzzle the viewer has taken up the challenge only to find there is no solution. This is a fundamental part of the attraction:

‘Thus, the explanation of the mystery’s appeal in terms of an intellectual puzzle or enjoyable game played between author and reader is partially correct, since the author is always challenging the reader to develop a correct interpretation of the story as a whole. This challenge or competitive game can be more or less complex, the puzzle solvable by the seasoned reader; as in most Agatha Christie novels, or not solvable by the reader (namely, me), as in mysteries by John Dickson Carr or Colin Dexter.’ (Goldman 2011: 266)

A separate element refers to the attraction of horrific or gruesome events for the viewer, the concept of morbid curiosity. The horror film is a long-established genre and has developed an increasingly violent dimension. In terms of true crime horror gruesome events can be the focal point, particularly with serial killers. Aside from any ‘entertainment value’ that may be based around escapism there is the potential for a protective dimension:

‘This vicarious viewing of violence, terror, and death activates physiological mechanisms that facilitate a survival response. In other words, we are motivated by a protective vigilance to attend to that which can harm us.’ (Harrison & Frederick 2020: 7)

There is a potentially rich vein of work to be developed with respect to curiosity and true crime. The University of Graz Biological Psychology has a field of research relating to true crime and sets out the key questions to explore:

‘So far, science knows very little about the causes, motives and effects of true crime consumption on our experiences and behavior in everyday life. Does true crime consumption have a “pathological” character that leads to more hostility, anxiety and stress in everyday life because we suspect a crime around every corner? Or are there even positive effects of true crime consumption, because we can learn something from these morbid worlds? Our goal is to decipher behavioral, physiological, and neurobiological correlates of true crime and thus build a resilience model around the fascination for true crime.’ (Universität Graz n.d.)

This is on an individual level but a fundamental issue for lawyers and those involved in the criminal justice system is the implications of the explosion of this type of programming and audience engagement with it. Concerns for the operation of the criminal justice system were raised when the popular television series “Crime Scene Investigation” (USA 2000–2015) demonstrated the role of new forensic science techniques in the delivery of justice. This led to claims about whether an identifiable ‘CSI effect’ was developing among lay personnel.

Embedding Technological Advances: ‘The CSI Effect’

‘The CSI effect’ was coined from the popularity of the television programme “Crime Scene Investigation” (USA 2000–2015) a long running CBS produced drama. It was immediately popular with viewers and led to numerous franchise offerings including “CSI: NY”, “CSI: Miami”. It is suggested that the tragic events of the attacks on the World Trade Centre spurred interest in understanding and solving crimes. The creator Anthony Zuiker noted:

“People were rushing to us for their comfort food. There was a sense of justice in CSI – it helped to know that there were people like our characters out there helping to solve crimes. And, of course, 9/11 was the world’s largest crime scene.” (Gilbert 2006)

Thus, the argument runs that the desire for justice on a grand scale engaged viewers for the more ‘routine’ murders and the quest to deliver a satisfying outcome. The format, cast and special effects created a powerful entertainment product that provided viewers with a new insight into the forensic investigation by law officers. The popularity led to concerns that viewers might gain a false or overstated view of the reach of forensic techniques which might alter their interaction with the Criminal Justice system, particularly in their role as jurors. Furthermore, the programme could create a false impression of the operation and process of evidence gathering and analysis. Cooley articulated this artificial perception of forensic science and personnel in three specific ways:

- ‘(1) crime labs are pristine scientific sanctuaries, which always have the most up-to-date forensic technology;
- (2) crime labs only employ the most skilled and imaginative “scientists” who make few, if any, errors; and
- (3) forensic scientists are actually practicing and engaging in legitimate *science*.’ (Cooley 2007: 471).

Cooley (2007) argues that this creates an audience perception of forensics which is at odds with the views of a section of criminal justice practitioners including defence lawyers, judges and even other scientists. He attributes this asymmetry of views to three specific elements. First, the television programmes fail to engage with the reality of the insufficient level of State funding to support forensic science. Financial limitations impact on both human and physical resources in a field where the acquisition of new technology and the ability to apply new techniques is fundamental. Skilled scientists are crucial to the operation of forensics.

Second, television programmes often treat forensic science as ‘infallible and absolute’ and those shown practising it as ‘super sleuths.’ As he notes ‘a doubt-free or absolute field of science is, for all intents and purposes, the quintessential oxymoron’ (Cooley 2007: 476). There are numerous examples of convictions based on scientific evidence that was later discredited. For example, at the trial of the Birmingham Six in 1975 there were two main pillars to the prosecution case, forensic science and the ‘confessions’. The six men were convicted on 21 counts of murder arising out of a pub bombing campaign carried out by the Irish Republican Army (IRA). Appeals were rejected despite new scientific evidence and fresh evidence that the men had been beaten prior to confessing. The fundamental basis of the evidence was the Griess test that had been used by a forensic scientist to establish whether the six men had recently handled explosives (nitro glycerine). This evidence was extremely controversial and over time became discredited.

At the final successful hearing in 1991 the forensic evidence was pored over by the Appeal Judges, and they noted the limitations of the Griess test compared to more sensitive and comprehensive alternatives:

‘The great advantage of the Griess test is its convenience. It can be carried out on the spot. Its disadvantage, as we shall see, is that it is not specific. In other words, there are other substances which may yield a positive reaction to the Griess test, depending on the conditions. Of these the most likely is nitrocellulose. This disadvantage explains why the Griess test has now fallen into disuse.’ (R. v McKenny 1991: 295)

With the validity of the forensic evidence, the Appeal Court concluded in the men’s favour.

‘For our part, we would say that in the light of the fresh scientific evidence, which at least throws grave doubt on Dr. Skuse’s evidence, if it does not destroy it altogether, these convictions are both unsafe and unsatisfactory. If we put the scientific evidence on one side, the fresh investigation carried out by the Devon & Cornwall Constabulary renders the police evidence at the trial so unreliable, that again we would say that the convictions are both unsafe and unsatisfactory. Adding the two together, our conclusion was inevitable. It was for these reasons that we allowed the appeals.’ (R. v McKenny 1991: 289)

A key point here is that despite other scientists casting doubt on Dr Skuse's evidence it was accepted by the jury leading to the convictions and an appalling miscarriage of justice with the six men suffering wrongful imprisonment for over 15 years (Mullins: 1986). Police brutality against some of those suspected of involvement in the 1970s IRA bombing campaign is dramatized in the film "In the Name of the Father" (UK 1993) which covered the imprisonment of the Guildford Four and Maguire Seven who all later had their convictions overturned on appeal (R v Richardson 1989; R v Maguire and others 1992). In addition to the cases noted above a further miscarriage based on scientific failures occurred with Judith Ward who was wrongfully convicted in 1974 of 12 murders. She was finally exonerated in 1992, and both the scientists and the scientific evidence were heavily criticised by the Judges.

What is particularly pertinent is the identity the court and jurors may construct around science and the scientists themselves:

'For the future it is important to consider why the scientists acted as they did. For lawyers, jurors and judges a forensic scientist conjures up the image of a man in a white coat working in a laboratory, approaching his task with cold neutrality, and dedicated only to the pursuit of scientific truth. It is a sombre thought that the reality is sometimes different. Forensic scientists may become partisan. The very fact that the police seek their assistance may create a relationship between the police and the forensic scientists. And the adversarial character of the proceedings tends to promote this process. Forensic scientists employed by the government may come to see their function as helping the police. They may lose their objectivity.' (R v Ward 1993: 674).

These cases attacked not just the tests that were being applied and the individuals but even the concept of an objective scientific 'truth' being uncovered through the court process. There are other notable miscarriages, aside from the Irish cases, where there has been a failure of forensic science (Samuels 1994; Cooley 2007). Similarly, DNA evidence, despite how it is portrayed in film and television is not infallible and there have been notable failures (Cooley 2007). Cooley draws attention to the way forensic scientists are portrayed and the reality particularly in terms of education, training and status:

'...forensic science crime dramas rarely expose and discuss these unforeseen forces which can wreak havoc on even the most ethical examiner's objectivity. Instead, these shows portray forensic examiners as essentially computer-like; their decision making is immune from powerful forces such as emotion and expectation, the only factor that can possibly affect their ultimate decision is the condition of the physical evidence.' (Cooley 2007: 488).

This may open a credibility gap in cases if the forensic scientists do not 'live up to' the portrayal if indeed a common portrayal could be established. It is not clear that any CSI effect operated with any degree of significance and the impact of the

programme may be overstated Podlas (2007). This is a part of the whole problem of establishing any media effect or impact on the criminal justice system itself. Arguably the new true crime offerings that methodically dissect the case for the audience provide a holistic perspective on the use of forensic science with its strengths and failures. The cases need to be meticulously explored to provide the credibility or legitimacy that the audience requires. Some programmes offer a greater degree of insight whilst some occupy a place on the spectrum close to light entertainment whilst still engaging morbid curiosity. What follows is an attempt to categorise the types of true crime programmes that constitute the genre.

Categorising True Crime

Original work on Film and the Law sought to establish new boundaries for the subject that went beyond the constraints of courtroom drama. The primary issue was the limitations of considering law films as only those based inside the courtroom. One recurring issue has revolved around the question of whether portrayals should be naturalistic or not. It was claimed that naturalism was both a product of the origins of the scholarship, academic lawyers who liked film, but also inhibiting: 'The notion that only naturalistic portrayals can be used as vehicles for effective critique, and comment on the questions of law and justice, is not only theoretically suspect, but also demonstrably false.' (Greenfield et al. 2010: 271).

However, with true crime naturalism is a central concept and vital to the integrity though there is room for dramatic input which will inevitably occur through editing. This is crucial if there is a campaigning dimension to the programme.

Unsolved Cases

Curiosity is piqued when there is a notable case or linked cases where nobody has been apprehended and charged or convicted. Unsolved mysteries especially historic ones may create a volume of speculative material that attempts to analyse the evidence and deliver a suspect. The material may include books, academic articles, films and television programmes and even tourist walks Hansen & Wilbert (2006) (Hoffin 2023). 'Jack the Ripper' was a notorious serial killer operating in the Whitechapel area of East London between 1888 and 1891 though it is not clear how many murders were committed by the same individual. Eleven murders in the period were referred to as the Whitechapel murders. Five of the 11 that all took place in 1888 are generally considered to be victims of the one killer and described

as the “canonical five”; Mary Ann Nichols, Annie Chapman, Elizabeth Stride, Catherine Eddowes, and Mary Jane Kelly. There are numerous fictional versions that have been developed with the murders as the backdrop e. g., “Ripper Street” (UK 2012–2016), “Jack the Ripper” (UK 1988), and “Jack the Ripper: The Definitive Story” (UK 2011). The ‘story’ is well established and provides an element of gruesome horror. “The Ripper”, a four-part series released via Netflix in 2020 series was based around the 13 killings of Peter Sutcliffe in West Yorkshire and Manchester between 1975 and 1980. Sutcliffe was named in the media as the ‘Yorkshire Ripper’ referring back to the 19th Century killer adding to the volume of work linked to ‘Jack the Ripper’. So, whilst Sutcliffe was convicted, a link was still made to the unsolved historic crimes.

Other infamous examples of unsolved murders that have attracted media attention include the Zodiac Killer who operated in Northern California in 1968 and 1969 with 5 known victims. “Unsolved Mysteries” (USA 1987) covers more than cold criminal cases, for example, it extends to UFO mysteries. It has been running since 1987 across several different networks, most recently appearing on Netflix and has accumulated over 600 episodes testifying to the appeal of mystery even if the outcome is uncertain.

Wrongful Convictions – The potential for innocence

Miscarriages or potential miscarriages of justice have long been a staple for both film and television whether fictional based on fact or a hybrid. Films inevitably require some additional dramatic moments to increase audience appeal, and the key question is the extent to which the extra elements ‘distort’ the ‘truth’. Jarvie takes a firm view that film is not a historical record and should not be perceived in that light:

‘Film is not the material of history. Documents are the material of history. At best, film is a visual aid. It is very nice to see and hear dead people, see places as they were, the state of technology and so on; film may be a useful check on interpretation, but it is not essential and not necessarily enlightening.’ (Jarvie 1978: 378).

There is a clear line, what might be termed ‘an adaptive scale’, between clear documentary at one end and pure fiction at the other with programmes that are ‘based on’ true events appearing closer to one end or the other depending on how loosely the original events are drawn upon or manipulated. This is even more problematic with older cases where the primary materials are limited or unavailable. A raft of work has sought to exonerate those convicted and at the forefront in the UK was

“Rough Justice”, (UK 1982–2007) a BBC programme that led to convictions being overturned (“Rough Justice” n.d.). This resulted in conflicts with senior legal personnel as well as internal disputes. Some senior judges were clearly irritated by the critiques of the criminal justice system that such programmes presented and took the view that individual errors were a lesser problem than preserving the integrity (public confidence) of the system itself:

‘Lord Denning, who said in 1980 when dealing with a civil action concerning the Birmingham 6: “If the six men win, it will mean that the police were guilty of perjury, that they were guilty of violence and threats and that their convictions were erroneous ... This is such an appalling vista that every person in the land would say ‘it cannot be right that these actions should go any further’”. And he stopped the case. Eight years later he was to say again about the Birmingham 6 in another case: “It is better that some innocent men remain in jail than that the integrity of the English Judicial System be impugned”. The integrity of the English judicial system is what protects the defendant. If there is no integrity, we cannot give up the right to silence.’ (Spens 1994: 9.59pm)

Such programmes and the miscarriages they exposed were eventually influential not only concerning individual legal cases but also structural and legislative changes within the criminal justice system. O’Sullivan (2005) makes the point that the problems of investigations exposed by such programmes were largely absent from the more traditional fare of police TV drama that failed to acknowledge or tackle the broader issues around abuse of process. Wrongful convictions and their televised portrayals were firmly within the domain of campaigning groups:

‘They were reflected very little in television police drama, although the introduction and subsequent working of the Police and Criminal Evidence Act 1984 (PACE) then went on to feature in most police procedurals. Nevertheless, it was not until the start of the 1990s that we start to see miscarriages of justice, or deaths in custody achieving representation in mainstream police drama (rather than in specialist portrayals).’ (O’Sullivan 2005: 512–3)

This suggests a perspective that miscarriages of justice were somehow individual and not part of a collective ‘problem’. This can be explained by the fear, noted by Denning above, of a loss of faith in the system itself. The tension between individual cases and structural defects is still apparent. The one bad apple police officer, detective or indeed negligent scientist (in the case of the Birmingham Six) is in many ways an explanation of injustice to preserve overall faith in the operation of the criminal justice system.

An interesting twist on the miscarriages trope was provided by the BBC programme “Murder, Mystery and My Family” (UK 2018–2021) which ran for five seasons totalling 50 episodes. The essence of the programme was the reinvestigation of historical cases where the death penalty had been imposed, so for example

in Season 1, the dates of the cases ranged from 1894 to 1953.² What was particularly interesting was not just the reinvestigation of old crimes but the format that adopted an adversarial approach with an eminent barrister on each side. Sasha Wass KC for the Prosecution and Jeremy Dein KC for the Defence with the evidence presented to a ‘judge’; David Radford, who in keeping with the format was in real life an appointed member of the judiciary. Each case resulted in a ‘verdict’ of either upheld or unsafe. The programme’s success led to a follow up show, “Murder, Mystery and My Family: Case Closed?” (UK 2018) that revisited the cases, see also “Julian Fellowes Investigates: A Most Mysterious Murder”, (UK 2004). The historical arm’s length reinvestigation has the advantage of being able to set miscarriages into a period of ‘different times’ effectively when society seemingly operated on alternative ‘views’ or ‘standards’. The ‘different times’ defence has been blithely used to explain or even justify long-standing abusive criminal behaviour.³ On the historical issues of abuse facing the music industry see Millman (2024).

The deliberate adversarial approach, mimicking the legal system, adopted in “Murder, Mystery and My Family” (UK 2018–2021), noted above is a way of legitimising the investigation and shrouding it in a sense of legal validation. This may be an important consideration even within programmes that are further along the adaptive scale. Presenting an even handed and intensely thorough approach to the review or reconstitution of the case is important to provide it with integrity and audience confidence. A programme that is revealed to have overlooked material or failed to interrogate it sufficiently rigorously creates a near fatal flaw in both the individual case and its entire mission. For example, “Rough Justice” (UK 1982 – 2007) campaigned vociferously on behalf of convicted murderer Simon Hall with the case being resubmitted to the Court of Appeal which rejected his claim. Hall later confessed to his crime before killing himself in prison. As Campbell (2017) notes this misjudgement by those campaigning undermined the claims of innocent prisoners who were still in prison.

The ‘did they – didn’t they’ do it may be an essential part of this category of programmes and crucially may alter as more is revealed. Viewers are able, if the programme is skilfully constructed, to not only pick a side as the case is unveiled but also alter their position or remain uncertain. This provides a strong rationale to keep watching until the end to find a conclusion. Even better, from the programme

2 Many thanks to Raymond F. Hogg for reminding me of this programme that won a ‘best daytime programme’ award in 2019. It is perhaps indicative of the sheer volume of true crime offerings that even those that have a unique perspective may be overlooked though market saturation does not yet seem to be an issue.

3 My thanks to Alexander M. Sinclair for his thoughtful perspective on how the concept of ‘different times’ manifested itself within the music industry in the 1970s and 1980s.

maker's perspective is the possibility of a Second Season as new evidence appears or as in the case of Robert Durst in "The Jinx" (USA 2015) a confession appears. "The Jinx" (USA 2015) created compelling viewing as it moved towards a dramatic finale as the Director presents a piece of damning evidence to the subject. Durst still wearing the microphone goes to the bathroom and seemingly self-confesses:

'There it is. You're caught. You're right, of course. But, you can't imagine. Arrest him ... [sound of tap running] ... I don't know what's in the house. Oh, I want this. What a disaster ... [shuffling and a soft burping sound] ... He was right. I was wrong. And the burping ... [sound of strangled retching] ... I'm having difficulty with the question. What the hell did I do? ... [audio of either burp or small wail] ... Killed them all, of course.' (Bruzi 2016: 267)

As Bruzzi rightfully notes this material creates a serious ethical and legal dilemma, as does the construction of the story through reenactments:

'Re-enactments are not evidence, although it is possible for them to build a convincing narrative about the events they depict. Much of the time Jarecki's re-enactments serve a 'look at me' function and signal the series' sense of its own importance. They also, ironically, validate the plausibility of the otherwise incredible catalogue of gruesomely strange events that make up Robert Durst's life.' (Bruzi 2016: 270)

The reenactment of crucial scenes provides the viewer with the opportunity to decide whose side they are on. Interestingly from an educational perspective, Glaser et al. suggest that reenactments within a hybrid documentary format support transportation and the 'fluent processing of a narrative' (Glaser et al. 2012: 45). The need to present a balanced view, especially when new evidence is unearthed is a fundamental prerequisite that leads to creating a framework that operates to retry the case. These programmes are undoubtedly both compelling and can have an educative function both about the individual case and the criminal justice system as a whole.

Searching for Motive

A third specific trope consists of those programmes that explore particularly horrific or frightening real-life events where the perpetrator is killed and the motive behind the crime is unknown. The more shocking the crime that has occurred the greater the desire to try and understand 'why?' This ties most closely to the idea of a curiosity for knowledge based around preservation or self-protection. A prime example is the case of Harold Shipman, Dr Death, the bespectacled General Practitioner who was convicted, in January 2000, of murdering 15 of his patients through administering drug overdoses. Behind the convictions was an estimation that he

killed as many as 250 mainly elderly people. The overall figure was impossible to establish as Shipman had written out the death certificates himself and the bodies cremated. Shipman refused to speak with the court-appointed psychiatrist and in 2004 killed himself in prison whilst serving a whole life sentence. That a medical doctor could murder several hundred elderly people without any obvious motive was disturbing not just to the local community but to society more generally. This also raises an issue for the film maker, “Harold Shipman: Dr Death” (UK 2002), as the prime interest of the audience, in such a grisly killing, is to establish the ‘why’. The widespread media coverage and the Public Inquiry that was established under Dame Janet Smith were able to divulge the pure facts such as the types of death and it could speculate over numbers, but it couldn’t get to the root cause. This is both bewildering and unsatisfying and severely limits the portrayal:

‘his motivations are unknown and unsubstantiated and his killings mundane. If greed is not a motivating factor then can he be categorized as a mercy killer, a trope that permits some sympathy? However, Shipman is neither an angel of mercy nor motivated by greed and so is set apart from the usual categorization of medical professionals who kill.’ (Greenfield 2021: 164)

Perhaps appreciating the limitations of the base material, a scene was created by the writers in an attempt to explain the motive and satisfy the audience. The Investigating officer is shown discussing the vacuum in understanding with the local Vicar and between them they suggest possibilities. The dialogue between the two becomes the vehicle to suggest and dismiss potential motivations. The section raises numerous possible behavioural impetuses derived from known serial killers. So financial gain, sexual gratification and mercy killing are all chewed over before determining it must be a ‘god complex’.

“I think that’s what I see when I look in those eyes, I think the Doctor reckons he is the supreme being that he has the ultimate power over life and death” (Greenfield 2021: 168)

This then extends to the relationship with his mother and his personal use of narcotics. What is left is a philosophical debate about whether Shipman was ‘born evil’. The scene provides the viewer with a series of options for the motive that they can choose to adopt to fill the official vacuum.

This idea of the unexplained killer being genetically created is also to be found in a second horrific incident that made its way to the screen, the Las Vegas shootings in 2017 by sole gunman Stephen Paddock. Paddock had booked a suite in a hotel that overlooked the Route 91 Harvest Music Festival. He fired indiscriminately at the crowd killing 60 and directly injuring over 400 people with gunfire. He then killed himself. The incident was covered in an episode of “Lies, Crimes and Videos” (USA 2019–2023) and a four-part docuseries “11 Minutes” (USA 2022).

The killer and the lack of motive is explored in the Eminem song “Darkness” which was released on his 2020 album “Music to Be Murdered By”. The excerpt from the lyrics below demonstrates the search for motive.

‘Cops are knockin’, oh-
Thought I blocked the entrance
Guess show time is over
No suicide note
Just a note for target distance
But if you’d like to know
The reason why I did this
You’ll never find a motive

Truth is I have no idea
I am just as stumped
No signs of mental illness
Just tryin’ to show ya
The reason why we’re so fucked
‘Cause by the time it’s over
Won’t make the slightest difference’
 (“Hello darkness my old friend”). (Eminem 2020)

Eminem is writing from Paddock’s perspective and tellingly includes the line ‘You’ll never find a motive’ and speculates that Paddock himself has no understanding of why he is carrying out a mass murder. Thus, the lack of ‘motive’ can be turned into a new cultural portrayal.

The need to know is best exemplified by the numerous portrayals surrounding Ted Bundy the infamous serial killer responsible for at least 20 murders of young women during the 1970s who was executed in 1989. The case has led to numerous media portrayals including books, songs, films and TV programmes. Despite his death some 35 years ago the thirst for understanding is still producing new works for example two TV series “Conversations with a Killer: The Ted Bundy Tapes” (USA 2019), Netflix documentary series, and “Ted Bundy: Falling for a Killer” (USA 2020), Amazon Prime Video documentary series. The audience’s interest in these examples despite the lack of any significant new understanding ties into the concept of a need to gain understanding as a source of protective knowledge.

The Twisted Confessional

The fourth identifiable subcategory within True Crime is the direct opposite of the examples cited above. Piers Morgan has become the primary interviewer for this

type of work with the following programmes “Killer Women with Piers Morgan” (UK 2016–7), “Confessions of a Serial Killer” with Piers Morgan (4 episodes, UK 2017–8), “Psychopath with Piers Morgan” (UK 2019). In these examples, offenders who have been convicted and incarcerated for terrible crimes explain their backgrounds and motivations. These seek to provide the other side of the ‘why?’ coin with an explanation from the perpetrator. What is of course missing is the murdered victim’s perspective. This type of programme requires a very serious or grisly crime to make the killer’s perspective newsworthy, in several that particular element has been the age of the killer and/or victim. As Morgan notes with reference to our need to understand to keep ourselves safe though without offering any reassurance:

‘It’s this kind of crime that haunts me most after I interview the perpetrators because it makes no sense and could literally happen to any one of us if we happen to be in the wrong place at the wrong time.’ (Morgan 2023)

One strong critique that has been levelled particularly at Morgan is that such programmes offer little in the way of new information but are more a vehicle for him to display his interviewing prowess and described as ‘murder porn:’

‘...the story of the pretty little blond girl who got the boyfriend her family disapproved of to slaughter them. Then they went back to his trailer and had sex (Morgan asks her about this, of course.) It’s not an immersive new investigation into a case. There seems to be no question of miscarriage of justice – Making a Murderer this really isn’t. There are no great revelations, or insights into violence and gender, no special reason for it at all, except that Erin is a KILLER WOMAN and she’s with PIERS MORGAN.’ (Woolaston 2016)

The issue is the sensationalising of the crime without discernible public benefit. Discussing “Psychopath With Piers Morgan” Mangan suggests that there is little to justify the programme that appears ‘to seemingly rehearse gambits for the parole board when he becomes eligible for release in eight years’ time. (Mangan 2019). There is a clear ethical issue with these types of online confession programmes concerning the rights of victims and their surviving relatives. But that criticism can of course also be levelled at programmes that investigate unsolved murders and disappearances such as “Tiger King” (USA 2020) (Baron & Fuhs 2021).

Conclusion

The explosion of True Crime television covering numerous different plots and themes shows no signs of abating. With more channels and hours of broadcasting to fill it is a popular and easy option given demonstrable viewer interest. There is

a continual flow of cases from the criminal justice system that provokes intrigue and, when coupled with a desire to know, the ‘true’ story provides a rich vein of fiction (a narrative incorporating both true events but employing dramatic licence) alongside the more traditional documentaries. Understanding the potential impact of dramatic portrayals has proved a difficult task for researchers. Almost 20 years ago Michael Asimow and colleagues from the law and film movement attempted an initial piece of work to seek to identify a relationship between dramatic portrayals of law and lawyers and student perceptions of the same. The study was limited in its construct, but it did reveal a potentially interesting vein of research as they noted: ‘...future work needs to be undertaken to ascertain the precise nature of the role of popular legal culture in terms of constructing our idea of law and lawyers’ (Asimow et al. 2005: 429). The work was also reported in Germany (Machura & Asimow 2004). Two key questions arise. First is with the development of so many different sources of information beyond the original programme and most obviously social media commentaries whether it is even possible to construct one meaningful research methodology covering all of the different media formats and genres. Secondly, whether the sheer volume of output has blurred so many previously more distinguishable lines. So not only are there many more sources of discussion on an individual case but also so many more cases that may blur perspectives. This might be termed the problem of both variety and volume.

The expansion of true crime and forensic science drama has introduced additional areas of criminal justice where the same conundrum exists, namely the potential impact of dramatic portrayals on the operation of the criminal justice system itself. Arguably their popularity may promote a healthy discussion.

‘But if the series serves to warn us against complacency, and leads to constructive discussion and review of our law enforcement procedures and many aspects of our judicial system, of wrongful convictions and basic inequalities that persist in our society, there are potentially positive and constructive outcomes.’ (Tan 2016)

Further as Del Visco (2016:212) notes: ‘*Making a Murderer* offers unique insights into the cultural, economic, and political contexts of the contemporary criminal justice system’. Kennedy (2018) makes an extremely valid point about the need to review and reconstruct methodologies to understand audience perception of programmes such as “*Making a Murderer*” by incorporating comments and other activities from social media which in his study explored the views of the Reddit community.

However, Boorsma (2017) argues that one of the potential problems created by true crime drama is the creation of ‘emotional’ perceptions of the criminal justice system which is contrary to the objective characteristics of the legal system. The emotional involvement of viewers with the Avery case and the signing of petitions

(Over four hundred thousand people requested that President Obama exonerate Steven Avery) are cited as examples. There is no doubt that a small fraction of viewers did become emotionally involved but it is not clear that this is detrimental to the 'system' itself. Do we not want the public to feel emotional about the operation and delivery of justice and adopt a critical approach based on the knowledge gained? Otherwise, this perspective seems to hark back to the 'naturalistic' debate within law and film that requires all programmes to forgo drama, something unlikely to find favour with the audience and consequently film makers. Undoubtedly these programmes all have flaws and there are numerous ethical issues to discuss but at least we are having a discussion.

This is an area within the broader field of cinematic justice that offers enormous scope for scholars from a variety of disciplines including inter alia law, criminology, psychology, forensic science and cultural studies to engage in a meaningful interdisciplinary dialogue regarding their construction and potential impact. True Crime, in its various emanations, provides a useful focal point for the development of new critical thinking relating to the portrayal of the criminal justice system.

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