

The Spectacle of Criminal Justice

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The Spectacle of Criminal Justice: Mass Media and the Criminal Trial

BY

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United Kingdom – North America – Japan – India – Malaysia – China

Emerald Publishing Limited
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2022

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

ISBN: 978-1-83982-823-2 (Print)

ISBN: 978-1-83982-822-5 (Online)

ISBN: 978-1-83982-824-9 (Epub)



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Environmental
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ISO 14001:2004.

Certificate Number 1985
ISO 14001



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Contents

About the Author	<i>vii</i>
Acknowledgements	<i>ix</i>
Introduction: Spectacular Justice	<i>1</i>
Chapter 1 The Evolution of the Spectacle	<i>15</i>
Chapter 2 Celebrity and Spectacles of Criminal Justice	<i>35</i>
Chapter 3 Childhood, Transgression, and Spectacles of Criminal Justice	<i>61</i>
Chapter 4 Gender, Drama, and Spectacles of Criminal Justice	<i>79</i>
Chapter 5 Terrorism, Politics, and Spectacles of Criminal Justice	<i>97</i>
Conclusion	<i>119</i>
Appendix	<i>127</i>
Bibliography	<i>129</i>
Index	<i>141</i>

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About the Author

Rosie Smith is a Senior Lecturer in Sociology and Criminology and York St. John University, UK. Her research primarily focusses on representations of criminal justice in the mass media, historical archival methods, visual criminology, and death.

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Acknowledgements

Back in January 2020 when I first embarked upon my book writing journey, I very much felt like I was walking into the unknown. Added to this, little did I know that the book would be written almost entirely during a global pandemic. My initial vision of spending hours squirrelled away in my university office writing in peaceful solitude quickly vanished, replaced instead by writing at home, in bed, or elbow to elbow with others at the dining table. As such, while I anticipated the process being challenging, it would not have been possible without the endless support of those around me.

Dr Ruth Penfold-Mounce and Professor David Beer, you were the best PhD supervisors I ever could have wished for. Thank you for your support throughout my doctoral journey and the years since; your enthusiasm for the project and your suggestion very early on in my PhD to eventually write a book gave me the confidence to get to this point.

To my wonderful colleagues and friends who have supported me and offered your expertise and guidance while writing this book. Particular thanks to Dr Matthew Spokes and Dr Tyson Mitman, for all of your advice and for putting up with me asking questions at a rate of knots. Dr Daniel Robins, thank you for your friendship and kind words.

And finally, Pete. Your unwavering love and support have got me through the last 18 months and through my many crises of confidence. You never ceased to make me laugh even on the days when the weight of the world was overwhelming.

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Introduction: Spectacular Justice

At the London 2012 Olympic Games, Oscar Pistorius nicknamed 'Blade Runner' made history. He became the first amputee athlete to compete in a track event at the Olympics. A double amputee below the knee, Pistorius had previously competed in the 2004 Athens Paralympics, winning gold in the 200 metres. After his successes, he set his sights on competing against able-bodied athletes. Despite eventually being eliminated in the semi-final of the 400 metres, Pistorius had made history and positioned himself not only as one of the greatest athletes in the world but also as a disability icon. Six months after his debut on the Olympic stage, Pistorius was back home in Pretoria, South Africa, and on the night of 13 February 2013, the story of Oscar Pistorius, and his athletic prowess, changed. According to Pistorius, having woken up in the early hours of Valentine's Day, and realising his girlfriend Reeva Steenkamp was no longer in bed beside him, he made his way to the bathroom door, allegedly fearing there was an intruder inside the house. Believing Reeva was inside and potentially being harmed by those who had broken into the property, Pistorius fired four bullets through the locked door. After breaking through the door, it was revealed that Reeva had been fatally wounded, and no intruder was found. 'That's the moment that everything changed' (Greene, Smith-Spark, & Smith, 2014). The next day Pistorius was arrested, and on 15 February, he was formally charged with premeditated murder.

Before the trial began in March 2014, just a little over a year after Steenkamp's death, Judge Dunstan Mlambo ruled that media outlets were allowed to film and broadcast parts of the trial to the public. This decision was a landmark one as not only would this become the first-time parts of a criminal trial in South Africa would be televised live, but it was a decision that allowed the case to quickly become known as the 'trial of the century' (D. Smith, 2014). Judge Mlambo ruled that the audio of the trial could be broadcast live in full, and particular sections of the trial including opening arguments, expert evidence, police witnesses, and closing arguments could be filmed and televised live also. In South Africa, broadcasters set up dedicated trial channels which focussed explicitly on the events of the case, and they televised footage 24 hours a day throughout the weeks that followed. Media coverage, however, was not isolated to South Africa. Given the celebrity status of Pistorius and his recent successes at the London Olympic and Paralympic Games only a couple of years before, the trial became an

2 *The Spectacle of Criminal Justice*

international public interest story, and broadcasters from all corners of the world descended on Pretoria to give their audiences first-hand insight. Both ESPN in the USA and Sky News in the UK bought the rights to *The Oscar Pistorius Trial* channel content and ran segments on their daily feed to a global audience. The public were hungry for information on the trial, and as a result, his fall from grace was played out in front of millions of eyes; ‘the trial – thanks to the media – got the world talking’ (Chuma, 2016, p. 324).

In September 2014, Judge Mlambo found Pistorius guilty of culpable homicide but, importantly, ruled he was not guilty of murder. In October of the same year, Pistorius was sentenced to five years’ imprisonment. Only one month later, the National Prosecuting Authority (NPA) in South Africa disputed both the verdict and the sentence and argued that Pistorius should be charged with murder which would mean, if found guilty, he could be sentenced to a much more substantial prison sentence of at least 15 years. In August 2015, Pistorius was set to be released under house arrest after having spent a total of 10 months in prison. This was, however, placed on hold, and after the NPA had submitted their appeal papers in December 2015, the initial verdict of culpable homicide was replaced with murder. Pistorius returned to the High Court in Pretoria. After an appeal by Pistorius was turned down, his new sentencing phase began in June 2016 with unprecedented attempts by both the prosecution and the defence to make their cases heard. In an attempt to show his vulnerability, the defence asked Pistorius to walk across the courtroom on his stumps before the court, which later became known as one of the most profound, emotively charged elements of the trial. After only a matter of weeks, Judge Masipa delivered her sentence. Pistorius was found guilty of murder and was sentenced to six years in prison. But the case did not end there. In November 2017, the Supreme Court of Appeals increased Pistorius’ six-year sentence to 13 years and five months. The earliest point he can apply for parole is 2023 and the case formally closed in 2018.

The violent death of Reeve Steenkamp, the subsequent murder trial of Oscar Pistorius, and their pervasive media coverage were the catalysts for this project. More specifically, I first began exploring the case and its related issues back in 2015 when I embarked upon my doctoral research (R. Smith, 2018). As such, this book represents the culmination of a six-year research journey and aims to take my doctoral project and develop it further. The Pistorius trial and its visibility within a global, mass media network epitomises the ways in which media technologies have the power to take a criminal case and turn it into a high-profile public drama. It became a sensational production of almost Hollywood grandeur, a story that for many appealed to a public desire to witness a seismic fall from grace and pull the curtain back on a fatal act of violence. Pistorius’ trial portrayed him as a ‘fallen hero() in an age where “heroes” with staying power are hard to come by’ (Chuma, 2016, p. 325). This public thirst meant that the trial was consumed on a mass scale by individuals around the world, who digested the information 24 hours a day through newspapers, television, panel shows, blogs, social media, and many more platforms. But while Pistorius’ case dominated headlines and was catapulted into the public imagination, it is not the first of its kind to do so. The high-profile visibility of criminal justice matters broadly, and murder trials more

specifically, has occurred previously. One of the most well-known examples was the murder trial of O. J. Simpson in 1995 where nearly 100 million viewers tuned in to watch, consume, and engage with the events that unfolded in the Los Angeles County Superior courtroom (Felman, 1997; Garcia-Blanco & Bennett, 2018; Grabe, 2000). The Los Angeles trial attracted unprecedented media attention that was ‘perhaps unparalleled in its intensity and explosive in its effects’ (Kellner, 2003, p. 108). In every sense, the O. J. Simpson case was far from a private judicial experience. The barricade, both symbolic and material, preventing the public from watching the events was dismantled in favour of it becoming a ‘mega drama’. The public were so greatly invested in the trial that when the verdict was delivered on 3 October 1995, the eyes of the world were watching. It is reported that during this time, in the United States, long distance phone calls reduced by 58%, water usage substantially dropped, and it is estimated the verdict lost the United States around \$480 million in productivity.

Going forward, it is hard to imagine the dramatisation of criminal trials waning. In the same week I began to write this book, around early 2020, it was announced that television cameras are allowed to film in Crown Courts in England and Wales for the first time. The Crown Court (Recording and Broadcasting) Order 2020, which came into force in June 2020, permits television filming and broadcasting of sentencing remarks by High Court and Senior Circuit Judges in Crown Courts (including the Old Bailey) including in serious and high-profile cases such as murder, terrorism, or sexual offences. If all conditions are met, the legislation means that Section 41 of the Criminal Justice Act 1925 and the Contempt of Court Act 1981 do not apply, and the footage can be filmed live and then broadcast with a slight delay. Nevertheless, according to Article 10, it is specifically stated that such broadcasts should not be for the purposes of ‘light entertainment’ (The Crown Court (Recording and Broadcasting) Order, 2020). These recent changes have brought England and Wales more in line with many other countries that have allowed the broadcasting of criminal trials for some time.

Around about the same time, the criminal trial of Hollywood producer Harvey Weinstein drew to a close. Weinstein faced five charges including predatory sexual assault and rape and has been sentenced to 23 years’ imprisonment. After allegations began being made in 2017, and which prompted the global #MeToo movement, for some, the Weinstein trial was perhaps one of the most anticipated in decades. Such cases, whether Weinstein, Simpson, or Pistorius, illustrate the infiltration of contemporary life by the mass media and how even the most private, mundane moments have the potential to be made into a public media spectacle (Adorno & Horkheimer, 2002; M. Brown, 2014; Carrabine, 2008; Debord, 2012; Kellner, 2003; Mathiesen, 1997; M. C. Moore & Moore, 2010; Rafter, 2014; Spierenburg, 1984). We are living in a society saturated and defined by media spectacle and the criminal justice system, as well as criminal trials, are increasingly featuring in this visual world (Reiner, 2002). Visibility in many ways can be seen as a central tenet of justice; indeed, justice must not only be done, it must be seen to be done (S. Moore, Clayton, & Murphy, 2021). As such, in a time when images, videos, and public life are constantly being ‘uploaded and downloaded, copied and cross-posted, Flickr-ed, Facebook-ed and Photoshop-ped’

4 *The Spectacle of Criminal Justice*

(Hayward in Hayward & Presdee, 2010, p. 4), and where ‘the globe *appears* on the world’s screens’ (Silverstone, 2007, p. 10) [emphasis in original], is it any wonder that criminal trials, and justice debates more broadly, are becoming part of this movement?

Spectacular Justice

To make sense of the ever-growing visibility of criminal justice in the mass media, this book presents the concept Spectacular Justice (R. Smith, 2018) which was first developed during my doctoral research as part of an archival, case study analysis. In presenting the concept and related case study research here, this book builds upon my doctoral thesis and seeks to develop it further. Spectacular justice describes the visibility of criminal justice in the media and public eye. More specifically, the concept speaks to the ways in which the media represents criminal trials, justice matters, and the individuals involved in them. In certain cases, criminal trials are a public spectacle that are designed, orchestrated, and edited to be consumed by the public and sold for entertainment and titillation (see also Jewkes, 2004; Peelo, 2006). According to M. C. Moore and Moore, the power of the media is substantial and impacts both how the public engage with crime and justice as well as how we interact with the world more generally. For them, ‘the boundaries between media and everyday life collapse when there is instant, live trial coverage on the scale of the Simpson case’ (2010, p. 314). Spectacular justice gives voice to this overlap, and the power of the mass media to take a criminal case and turn it into a high-profile public drama in which the private matters of the justice system and its characters are catapulted into the public imagination. The concept prompts us to embrace what Rafter described as a ‘visual turn of mind’ (2014, p. 131) when studying and researching criminal justice and death matters. In essence, spectacular justice was designed to be a conceptual project that outlines this process of representation in a tangible way. As such, spectacular justice offers a framework to better understand the intersections between criminal justice and the media in future cases. It gives meaning to a system in which the ‘boundaries between media and court collapse and penetrate each other; they interact. Everyday life becomes intertwined with an image of life in the media’ (M. C. Moore & Moore, 2010, p. 314). The spectacle of justice is all around us.

Taking a case study approach, this book examines media representations of four murder cases: Charles Lindbergh Jr, James Bulger, Jodi Arias, and Anders Breivik. These four cases, although vastly different in geography and timing, each vividly exposes spectacular justice and enables a narrativised exploration of some of its core features. The cases illustrate the spectacle of justice within the USA, UK, and Norway and allow for a discussion of how the visibility of justice debates and criminal trials has changed historically as they date between 1932 through to the present day.¹ Not only are they culturally and historically

¹See Appendix for further information regarding the laws surrounding filming in courtrooms for each nation.

different, but the details of each case expose variations in how the mass media reports on justice matters. Charles Lindbergh Jr was the son of famous aviator Charles Lindbergh who, aged only 20 months, was kidnapped from his home and later murdered; James Bulger was abducted and violently murdered by two 10-year-old boys, Robert Thompson and Jon Venables, quickly becoming one of the most infamous murder cases in the UK; Jodi Arias was a photographer and waitress who murdered her ex-boyfriend Travis Alexander by shooting, stabbing, and nearly decapitating him in his Arizona (United States) home; and finally, Anders Breivik who, in 2011, carried out the Norwegian massacres, killing 77 people in total in a politically inspired attack on the Norwegian labour party.

To examine these four case studies, and investigate their media representations, this book draws upon international media archives² and analyses their discourses. For Steedman (1998), archival research ideally positions the researcher to unearth snapshots into history which are otherwise invisible and unnoticed until ‘read ... used, and narrativized’ (p. 67). Using media archives to explore the spectacle of criminal justice allows this book to capture distinct moments in time and embellish these moments with stories and characters. But they are ‘not just stories’ (Plummer, 2001, p. 221); they are magnifying glasses with which that which was perhaps previously unseen becomes visible. Media archives give the spectacle of justice shape; they bring it to life.

In summary, the spectacle of the criminal justice system is the conceptual framework around which this book is built. The rest of this chapter will be dedicated to outlining the different features of the concept. It will highlight the uses of the framework for individuals working in both criminology and death-related disciplines as well as for readers who are simply interested in the drama, the glitz, and the allure of criminal justice today.

What Do We Mean by ‘Justice’?

Before embarking any further, it is helpful at this early stage to clarify what is meant by ‘justice’ or, more specifically, how ‘justice’ will be approached in the upcoming chapters. Justice will be conceptualised throughout this book as inherently complex and fluid, and its use here is heavily influenced by David Garland’s conceptualisation of justice, laid out in his book *Culture of Control* (2001, see also Garland, 1991). As will be shown in this book, what justice means and how it can be defined is both broad and challenging. To make sense of this definitional ambiguity, and to fully grasp the complexity of crime and crime control in society, Garland advocates for understanding control and justice as being twofold. ‘The first is formal notions of control and justice, as enforced through the state and governmental agencies’ (R. Smith, 2018, p. 44), for example, that which is manifest in official institutions such as criminal courts, the prison system, and embedded within those that run them and enforce their rules. ‘The second notion refers

²Media data are collected from a number of archives including LexisNexis, Nexis, The British Library, *The New York Times* Archive, and The Breivik Archive.

to informal notions of control and justice as enacted through the everyday interactions and actions of individuals' (R. Smith, 2018, p. 44). That is, justice as that which exists within the relationships between social actors, as well as their feelings and emotional responses to matters of criminality (Garland, 2001, p. 8–9).

As such, justice will be approached throughout this book as 'a complex social institution and desire that is influenced by both the state and individuals' (R. Smith, 2018, p. 45). More importantly, the following chapters will demonstrate how notions of spectacle are visible within institutions and spaces of justice such as criminal trials (formal) as well as within the 'micro interactions between lay individuals who are both the object of media spectacles and the receivers' (R. Smith, 2018, p. 45). For example, justice as that which is present in public debate and discourse (informal). With this in mind, while this book examines that which it owes its title, 'Mass Media and the Criminal Trial', the conceptual development of spectacular justice is designed to also illustrate the complexity of these issues and the importance of recognising the co-existence of formal and informal justice, in media orchestrated spectacles of criminality and death. The following section elaborates upon this further.

Conceptual Toolkit

Spectacular justice offers a conceptual toolkit for understanding the often-overlapping interactions between criminal justice matters, the public, and the mass media. The following framework is designed as a structure which the reader may use to make sense of, observe, and examine other instances where criminal justice is played out in the public eye. While spectacular justice speaks to the broad observation that justice and criminal trials feature increasingly within broadcast, print, and social media, by itself, it cannot detail the complete variations in how cases are represented and manufactured into a spectacle. All spectacles of criminal justice are different, and, as such, no two are the same. Variations exist for a myriad of reasons including, but not limited to, the crime that is committed, the location of the crime and justice institutions, cultural scripts, as well as social divisions such as gender, class, sexuality, and ethnicity, to name only a few. All of these factors have the potential to determine what the spectacle of a criminal case looks like and how it is subsequently received by the public.

To examine each of these variations exceeds the remit of this book and would perhaps constitute a lifetime of work. That said, there is a commonality within almost all criminal cases; they involve a combination of human characters and personal stories. Spectacular justice is determined by human stories. As such, the focus of this book is not how specific crimes trigger a media reaction and transforms the case into a public issue. In this way, this book moves beyond eminent studies of criminality such as *Policing the Crisis* (S. Hall, Critcher, Jefferson, Clarke, & Roberts, 1978) or Cohen's (2011) influential work on *Folk Devils and Moral Panics* that have dominated the criminological canon for so long. Although it is recognised that typically the 'worst crimes produce the biggest headlines' (Peelo & Soothill, 2000, p. 137), in this book, human characters and their stories are the focus. Human stories are seen to provoke the spectacle of justice, and

when these stories and characters collide, we are presented with a kaleidoscope of spectacles with the potential for an infinite number of complex representations.

To harness such a complex, and at times unwieldy, set of media representations, three central characters are identified which it can be argued feature in many, if not all, criminal cases. They represent who Peelo calls 'key players' (2006, p. 163). To fully understand spectacular justice and what it means, it is necessary to examine the media representations and discourses of the *Victim*, *Perpetrator*, and the *Expert*. These are the human keystones not only around which this book is structured, but with which spectacular justice is seen to flourish. In their own way, each of these three characters and their media representations and discourses are contributing factors to exciting and maintaining spectacles of criminal justice. The identities and stories of victims, perpetrators, and experts are integral to first triggering a media spectacle and second in determining the shape and nature such spectacle adopt. Spectacular justice is inherently complex, and thus, to grapple with such diverse intricacies, there are a number of sub-categories which have been developed to better understand how, within cases that are turned into high-profile sources of entertainment or drama, victims, perpetrators, and experts are represented. Fig. 1 outlines spectacular justice and its conceptual framework.

Using archival media data from the four case studies (Lindbergh Jr, Bulger, Arias, and Breivik), this book examines three variations in how each character is represented and constructed by media discourses and the function these diversities serve to the spectacularisation of justice process and debate. The following definitions outline the key features of each character:

The Victim

The victim sits at the intersection between crime and justice, and they often emotively embody the social transgressions of the perpetrator. As such, victims are central to the role of the spectacle within justice. The 'victim' will be conceptualised in three main ways: *Quintessential Victims*, *Collateral Victims*, and *Ambiguous Victims*. Each sub-category seeks to highlight the spectacle around justice as well as the inherent subjectivities and complexities which surround victims.

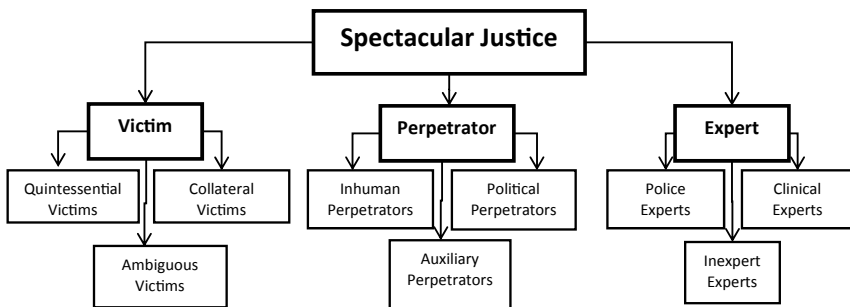


Fig. 1. Conceptual Toolkit. Source: R. Smith (2018).

Quintessential Victims. Those who are both an ‘ideal victim’ (Christie, 1986) and who are victimised by extreme criminality and/or violence resulting in graphic bodily destruction (Seltzer, 1998). Existing at the intersection of purity and extreme violence, *Quintessential Victims* are exceptionally newsworthy and catapult justice matters and criminal trials into the spotlight.

Collateral Victims. This concept gives meaning to collective displays of mourning, loss, and grief in response to a criminal act. The spectacle of criminal justice thrives when victimisation is experienced at a social, as well as individual, level, and *Collateral Victims* highlight how community felt emotions contribute to the spectacularisation of formal criminal trials and informal pursuits of justice. Spectacular justice exists in the hearts and heads of citizens, as much as it does in the bureaucratic spaces and rule books of the state.

Ambiguous Victims. Spectacular justice thrives on ambiguity and the ‘grey areas’ that exist in complex criminal cases. *Ambiguous Victims* speak to the individuals and/or social groups who express feelings of victimisation but around whom there are social, cultural, or political questions relating to the validity of their claim to the victim status. Where this contestation exists, we see justice debates and institutions thrust into the public eye.

The Perpetrator

Much like the victim, the perpetrator is an equally important character to consider when exploring media spectacles of criminal justice as the identity of, and discourses surrounding, the perpetrator play a central role in determining the scale and character of the media spectacle. The ‘perpetrator’ is conceptualised in three main ways: *Auxiliary Perpetrators*, *Inhuman Perpetrators*, and *Political Perpetrators*.

Auxiliary Perpetrators. This concept gives meaning to the individuals and/or social groups who feel, or are held, responsible for a criminal act while not having committed the act themselves. *Auxiliary Perpetrators* are not directly culpable for the criminal act, for example, they did not commit the act first-hand, but rather they may be indirectly involved either because of something they did or, perhaps, did not do. This concept casts the definitional net of responsibility beyond the direct perpetrator and demonstrates how spectacular justice is conspicuous when notions of institutional blame and obligation closely follow a criminal act.

Inhuman Perpetrators. Perhaps one of the most self-explanatory concepts, *Inhuman Perpetrators*, reflects the vilification and social malevolence targeted at some perpetrators following their criminal acts. Where individuals are constructed by the media as criminal creatures or other-worldly beings, we see the spectacle within criminal justice flourish. In cases where there is a clearly defined perpetrator whom society can ‘other’ and ostracise, the public spectacle of justice continues to serve a powerful social function.

Political Perpetrators. Where politics and crime collide, we see spectacles of criminal justice come to life. As such, politically motivated crimes are some of the most influential factors in the volatility of spectacular justice; it is especially