

***Cape Fear* – Two Versions and Two Visions Separated by Thirty Years**

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This essay examines the changes between 1962 and 1991 that occurred in the context within which the two very different versions of Cape Fear appeared. These two versions of the story of a threatened lawyer are emblematic of an altered perspective on law. The essay highlights the tension between art's role as a reflector of society and its values and its role shaping social views. The inference, from the different portrayals of Sam Bowden, that there has been a systematic decline in the lawyer's status and public esteem is not, however, borne out in the cinematic field. The situation has become one of moral ambiguity with the lawyer playing a more ambivalent role in society.

ATTICUS FINCH AND CAPE FEAR I

The fictional Atticus Finch has become the icon of the 'legendary old-fashioned country lawyer' – a person of virtue, rectitude, and decency who represents all that is good about the practice of law, an image in sharp contrast to the frequent depiction of the modern lawyer as one whose sole motive is the acquisition of money and the commodities it can purchase. So common are references to Finch, hero of the Harper Lee novel *To Kill A Mockingbird* as the ideal lawyer that lawyers or law students being recognized for their public interest work are often described as an embodiment of Finch. When a film version of the novel was produced, it was no surprise that Gregory Peck was chosen to play Finch. Peck's strength as an actor has always been his ability to assure the audience that he stands as tall morally as he does physically; efforts by him to portray more complex or even villainous characters have been less satisfactory. His image calls to mind Abraham Lincoln far more readily than Captain Ahab (although he has played both roles).

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Peck personified the role of Finch well enough to receive the Academy Award for best performance by an actor 1962, thereby overcoming both the general rule that portrayals of mentally or physically challenged characters are more likely to reap such awards than portrayals of virtuous protagonists and the specific strong competition in that year's Best Actor race (particularly from Peter O'Toole in *Lawrence of Arabia* and Marcello Mastroianni in *Divorce Italian Style*). It was a popular win by an actor well regarded by the public and his peers for playing a character whose very name has come to be a synonym for integrity.

The same year that Peck starred in *To Kill A Mockingbird* – 1962 – another, more generic picture starring Peck was released by the same studio, Universal. This picture was *Cape Fear*, based on a novel by John MacDonald (best known for his Travis McGee mystery series) in which a vengeful ex-con named Max Cady stalked the family of Sam Bowden because Bowden's testimony had been key to Cady's imprisonment. The role of Cady was played by Robert Mitchum, in another of his long line of persuasive performances, as an evil but clever force single-mindedly pursuing revenge.

In this picture (which I refer to as *Cape Fear* I hereinafter) Peck's character has many of the virtues of Atticus Finch, although he is not called upon to take a moral stand that pits him against his community. Sam Bowden appears as a decent, loving family man who performed his civic duty by giving truthful testimony against Cady; because Cady is canny enough to keep his overt actions within the letter of the law, Bowden eventually is forced to fight Cady to protect himself and his family. Of course, Peck's character eventually triumphs physically as well as morally in what may be characterized as a Hairbreadth Harry finale. The family unit is literally saved by the actions of its virtuous patriarch.

CAPE FEAR II

Few are the films, especially successful ones, that are not eventually remade and this fate befell *Cape Fear* in 1991. The passage of almost thirty years between the two versions unsurprisingly led to significant differences between them.¹ Some of these differences were essentially technological; the 1962 version (like *To Kill A Mockingbird*) had been shot in black and white while the remake was in colour. Others were due to directorial influence. The earlier version had been directed by J. Lee Thompson, best known as a competent craftsman, particularly of action films such as *The Guns of Navarone*; the 1991 version was directed by Martin Scorsese, widely regarded as the major American director of the last quarter of the twentieth century, even by those generally hostile to *auteur* theory. The most

1 R.K. Sherwin, *When Law Goes Pop* (2000) 171–81.

significant differences, however, were cultural. The differing approaches to telling what is essentially the same story seem to reflect a societal shift in viewing matters concerning the law and lawyers as well as other aspects of American society. In the course of approximately thirty years, the story of *Cape Fear* has become not the earlier version of unadulterated good versus evil pitting a good American family man against a violent and crafty evildoer but a more complex story. And the 1962 story of vengeance being sought by one who was justly punished for crime becomes, in 1991, a story of retribution being sought by a criminal who was convicted because he was not provided with proper legal representation.

The key change in the two versions is that of Max Cady's reason for pursuing vengeance. In the 1991 version, Sam Bowden is not, as in 1962, the witness who testified against Cady; instead he is the lawyer who defended Cady at the trial. While serving as Cady's public-defender lawyer, Bowden held back evidence that might have changed the outcome of the trial—evidence of the victim's promiscuity. Presumably, this was due to Bowden's moral outrage at the conduct of his client, perhaps even a belief that such evidence should not have been admissible. What would an Atticus Finch have done in such a situation? Would he have followed the rule of law in the case while perhaps challenging it as a rule subsequent to the case? Or would he have resigned as a public defender then or later? Would he have found a capable replacement for himself as the defence counsel? Whatever the answer, it seems certain that neither Atticus Finch nor the 1962 film version of Sam Bowden would have engaged in deliberate withholding of evidence capable of leading to an acquittal of a defendant, no matter how despicable that defendant.

This change in the plot line also causes a change in our perception of Max Cady. The character is played in the 1991 version by Robert De Niro. Here, Cady becomes committed to his campaign of vengeance only after learning, while in prison, that Sam had not represented him to the full. Thus, his motivation makes him, to some degree, a sympathetic character, notwithstanding his sinister and violent conduct. His quest for revenge is something of a quest for 'justice' due to the circumstances of his conviction.

Bowden's character, played by Nick Nolte in the remake, differs from the 1962 version in that his family no longer is a loving and cohesive unit of father, mother, and daughter but that popular item of late-twentieth-century culture, a dysfunctional family. Sam Bowden has a mistress as well as a wife in this version. Cady's reappearance serves to disrupt and further disunite the family until the climax, where, in a houseboat on the waters of Cape Fear during a tremendous storm, the family eventually manages to unite to defeat and kill Cady in resisting his efforts to destroy them. It is not an easy task; Cady's character by the climax of this version is the type of almost superhuman villain resistant to many actions that would kill or incapacitate a physically normal person, a type of villain popular with film makers and audiences at least since the success of *Fatal Attraction* (1987). This contrasts

with the character in the 1962 version where Mitchum's portrayal is of a strong and cunning man but one clearly recognizable as having the physical limitations of a human being. By the end of the 1991 version of *Cape Fear*, the Cady character seems closer to the devil incarnate than a devilish villain.

CONTRASTING THE TWO VERSIONS

The two versions of *Cape Fear* surely reflect the changes occurring over three decades of American life and American popular culture. Although a number of changes in the 1991 version were Scorsese's, the key element of changing Sam Bowden from a witness against Cady to a defence counsel who did not present the strongest case for his client was in the script that was first presented to the director, according to Scorsese himself, who stated that he liked this change.² The Bowden family as a troubled one instead of the happy unit headed by Peck, in the 1962 version, was instigated by Scorsese. The director embarked on this project for Universal Pictures in return for Universal having backed Scorsese's *The Last Temptation of Christ* (1988) – a film that had been a pet project of Scorsese for many years but clearly one that would not be considered a likely commercial success.³

Both versions of *Cape Fear* apparently were satisfactory box-office successes. Indeed, the second version may have been the most financially successful film directed by Martin Scorsese. However, the later version tended to be compared unfavourably with the earlier one by a number of critics. A major complaint was that the role of Max Cady had become unrealistic in the new version. Many found that even an actor of De Niro's skill could not make them believe that the 1991 version of Cady was other than a created character whereas Mitchum's was more realistic. The change in the Max Bowden character was generally noted but this aspect of the later film did not lead to evaluation of it as a nuanced presentation of ethical dilemmas or the like; essentially the melodrama of the film and Scorsese's approach to its visual elements were the major focus. The 'gimmick' of using Peck, Mitchum, and Martin Balsam, actors who had all played roles in the 1962 film, in small parts in the 1991 version, also received some attention.

Now that nearly a decade has passed since the second version was released and both versions have been shown frequently on television (although, as usual the more recent film is more often shown) a view of the two films from the vantage of time seems appropriate. Seeing the two pictures, one finds the critical consensus of the years of release to hold up rather well. The 1962 version is a competent genre thriller, given credibility by the believability of Peck as an old-fashioned hero, a man of decency able

2 A. Dougan, *Martin Scorsese* (1998) 165–9.

3 D. Thompson and I. Chrishe (eds.), *Scorsese on Scorsese* (1996) 185.

to rise to the occasion when his beloved family is threatened with no good cause and even more so by Mitchum as a villain with a truly menacing presence. Their counterparts in the 1991 version, Nolte and De Niro, while generally regarded as actors of greater range than Peck and Mitchum, seem less satisfactory. Nolte's character seems more suited to an Ibsen play than to what remains a genre film while the script, if not De Niro himself, make his character's actions too 'over the top' to allow the willing suspension of disbelief necessary to a fully successful motion picture.

However, the limitations of the later film are matters of artistic success, not of failures to recognize a changing social climate. 1962 was a year of the Kennedy administration; indeed, the year of apparent triumph by the United States of America over its enemies in the Cuban missile crisis; certainly, that is how many viewed the situation at that time. In those pre-Watergate, pre-Vietnam war (in so far as the general public was aware), pre-Kennedy assassination, pre-riot days, idealism and optimism were widespread. The ability of an Atticus Finch to win the wars against racism, totalitarian ideologies, and other evils (if not necessarily individual battles such as the trial of Finch's innocent client in 'Mockingbird') was not doubted by most Americans. Indeed, government itself was viewed benignly by most. The travails of thirty years since that time to *Cape Fear II* has led to a public far more suspicious of authority of all kinds. Even if a rapist is sent to jail, it may have occurred only because a lawyer ignored the 'technicalities' of the law. Also, a vengeance-obsessed ex-convict may have a legitimate basis for anger at those within the legal system if not for the measures of revenge that he seeks. The so-called 1950s Ozzie & Harriet nuclear family either does not exist or is seriously impaired as a functional unit. The 1991 version of *Cape Fear* seems consistent with the sceptical movie-going public of its day just as the 1962 version is consistent with the optimism of its time.

In this comparison of the two films, I have asserted that the 1962 version holds up under critical analysis better than the 1991 version. Yet, the later version is, in many ways, a more interesting, if less successful, film in part because it blurs the lines between its 'hero' and its protagonist. It is also more interesting because a Scorsese film that is not a complete success is generally more interesting than a fully realized genre film.

Atticus Finch and his cousins such as the Peck characterization of Sam Bowden still exist, in fact and in fiction, notwithstanding the cynicism that so many today have toward the law. The world around them, however, has changed in ways that make it more difficult to ignore any warts on their portraits.

LAW AND *CAPE FEAR* – THE CHICKEN OR THE EGG?

Much attention has been given to the question of popular art and actual society. Does art simply reflect the society and its values or are the society's views shaped by popular art, especially those, like film and television, that

reach a large audience? The correct, if intellectually wimpish, answer is that both occur - popular art is influenced by society as well as reflective of it and society is influenced by popular art. In comparing the two versions of *Cape Fear*, I have noted the way the two versions are representative of the times in which they were produced.

An interesting aspect of the widespread view of hostility towards lawyers is that it is largely directed to lawyers as a class. There is substantial reason to support the view that a high percentage of clients feel that their lawyer is honest, ethical, and trustworthy.⁴ Some of the expressed hostility to lawyers surely comes from popular views of lawyers as predators, a view that ironically is not uncommonly presented by lawyers who are seeking, on behalf of their clients, to limit the scope of lawyer activity, such as those advocating for what they call 'tort reform'. Yet, as legal educators are well aware, demand for the legal education that is a prerequisite for practicing law continues to exceed the supply by a considerable margin. A cynic might say that this interest in the profession is because law practice is considered a door to potential riches but there is little doubt that a large number of law students see the profession as a mechanism for assisting people in need, especially those who traditionally are unrepresented or underrepresented before courts and agencies.⁵

The image of Atticus Finch, as noted earlier, is far from dead. However, this image of the lawyer may be more used within legal circles than outside them. The general public is more likely to view, say, Johnny Cochran, as the 'typical' lawyer. It is also likely to assume that the novels of John Grisham and the films made from his novels are realistic portrayals of legal practice rather than entertainments. Indeed, the president of the American Bar Association, in listing his aspirations for the future of the legal profession in an address at the annual meeting of the American Law Institute, listed among them the goal of seeing American lawyers recognized as practicing an honorable profession and noted that he did not expect to see this come to pass 'in his lifetime'.⁶ Surely, this denotes the image that lawyers themselves largely believe they have in the public's mind.

Thus, today's popular culture may well depict a lawyer engaged in battling for a worthy cause, but the likelihood is strong that the battle will prove unsuccessful by almost any measure, as in the recent films *A Civil Action* and *The Rainmaker*, whereas Atticus Finch had had some measure of moral victory. It may be noteworthy that, in the most financially successful 'legal battle film' of 2000, *Erin Brockovich*, the heroine is a paralegal, not a lawyer (indeed, a key reason she is able to get vital facts from aggrieved

4 M. Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse* (1998).

5 L. Schachter, 'Making It and Breaking It: The Fate of the Public Interest Commitment During Law School by Robert V. Stover' (1989) 88 *Michigan Law Rev.* 1874.

6 J. Podgers, 'Message Bearers Wanted' (1999) 85 *Am. Bar Association J.* 89.

citizens is because she is not a lawyer). The righteous cause depicted in the film triumphs only because of her persistence against the reluctance of her firm to bring the case. Her foul mouth and habit of wearing very revealing clothing are treated as admirable honesty on her part. Of course, there is a real Erin Brockovich and the film's portrayal of her is considered to be reasonably accurate. None the less, the perspective from which the story is told is different. Ms. Brockovich is not just the catalyst that starts an ultimately winning action against a major corporate power but, in essence, the antagonist of the company, with the lawyers for her cause playing rather minor, if necessary, roles in the struggle. The major lawyer for whom Ms. Brockovich works, depicted in the film by Albert Finney, is presented as a likable, somewhat easygoing individual, but one lacking the passion for justice that drives Erin Brockovich. No Atticus Finch is he!

The standard good versus evil of the genre film traditionally presented either good or bad lawyers. The 1991 version of *Cape Fear* presents a lawyer who is best labeled a protagonist rather than a hero and who is beset by moral ambiguity in both his professional and personal life. It seems significant that this occurs even though the lawyer was a public defender, generally a position considered filled by one of the 'good guys' in American liberal imagination. Perhaps the public defender is overworked, underpaid and without the resources of the opposition, but the position embodies the concept of equal justice under the law. In *Cape Fear II*, even a lawyer in this position is depicted as one whose moral compass is askew. If that is the case, then lawyers in more traditional practices surely are viewed as even less like Atticus Finch. This may be one of the 'lessons about law today that people learn from such sources as film and television'.⁷

7 S. Macaulay, 'Images of Law in Everyday Life: The Lessons of School, Entertainment and Spectator Sports' (1987) 21 *Law and Society Rev.* 185–218.

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