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| **MY TAKE - FEATURE ARTICLE** | | |
| ***John Denvir***, who teaches constitutional law at USF Law School, is editor of Legal Reelism: Movies as Legal Texts, available at local bookstores or through [amazon.com](http://www.amazon.com/).              **"**  At least "To Kill a Mockingbird" and "Anatomy of a Murder" held out **the possibility** that law led to justice; most Hollywood films prefer to see law as **an obstacle** to the achievement of justice.  **"**                                          **"**  The "rule of law" can produce **justice**; law is a cultural achievement about which we should be **very proud.** But the procedures do not work automatically.  **"** |  | **"The Law of Rules"** by John Denvir  **I** think many students choose law school because they see law as a tool of justice. I know I did. In part, the image of law I came from was shaped by the exploits of civil rights attorneys like Bobby Kennedy in the early 60's. But I was also very much influenced by "movie" lawyers like Gregory Peck in *To Kill a Mockingbird* and James Stewart in *Anatomy of a Murder*.  Now the connection between law and justice seems much more problematic. Maybe it was always problematic. In *To Kill A Mockingbird*, Gregory Peck’s innocent client was found guilty while Jimmy Stewart’s guilty client in *Anatomy of a Murder* was found innocent. And come to think of it, historians have shown that Bobby Kennedy was more interested in electing his brother President than in bringing racial justice to the South. His "heroic" acts were really forced upon him by civil rights leaders like Martin Luther King.  At least *To Kill a Mockingbird* and *Anatomy of a Murder* held out the possibility that law led to justice; most Hollywood films prefer to see law as an obstacle to the achievement of justice. Take , for instance, *Dirty Harry*. You will remember that at the end of that movie, Harry Callahan (Clint Eastwood) has finally been able to elicit a confession from a psychopathic child killer by utilizing the type of extra-legal persuasion for which Dirty Harry has become famous. When he’s called to the District Attorney’s Office, Harry expects to receive a commendation. Instead, the District Attorney informs him that he has violated the suspect’s constitutional rights. The DA even has a retired judge calmly explain why the "law " requires that this psychopath must be released. Harry warns the DA that the suspect will kill again; and, as usual, Harry is right; the released suspect continues to kill until Harry finally shoots him down. Violence achieves the justice that law could not. This is not the kind of story which motivates people to take LSAT.  As a law professor, I am always looking for "positive" images of lawyers to hold up for my students’ emulation. One current favorite is found only at the video store; it’s Antonin Costa-Gavras’ political thriller "*Z*" which was made in 1969. It presents a relationship between law and justice diametrically opposed to that implied in "Dirty Harry." Here we see a legal story in which a competent (and courageous) judge following established legal procedures is able to make the legal system work. You might say that Costa-Gavras shows us that the rule of law must also be a "law of rules."  The plot is based on an actual political assassination in Greece in the 1960's. A popular democratic leftist politician (Yves Montand) is clubbed to death by thugs allied with the right-wing police force. The police deny any connection with the "accident." A judicial investigation begins under the supervision of a young magistrate (Jean-Louis Trintignant). Since the young judge comes from the same social background as the police and shares their antipathy for the leftist opposition, he is at first more than willing to accept their version of the events.  But he is also a legal professional, trained in sophisticated procedures for taking and evaluating evidence. We see two dramas unfold. One is the judge’s slow realization that he is not dealing with an accident, but rather a political assassination followed by an official cover-up. He at first resists this conclusion, but his legal training requires him to exhaustively interview witnesses and cross-check their testimony against official records and the testimony of other witnesses. Slowly his fidelity to proper legal method overcomes his social and political prejudice.  The second drama is the insidious manner in which the political considerations threaten to undermine the autonomy of the legal investigation. The District Attorney announces that the judge is in complete charge of the investigation, but at first subtly and then not so subtly attempts to guide him to a predetermined politically acceptable legal conclusion. When attempts at persuasion fail, they are replaced by veiled, and not so veiled, threats of retaliation. Still the young judge indicts the Chief of Police.  Here is the moral I draw from "*Z*." The "rule of law" can produce justice; law is a cultural achievement about which we should be very proud. But the procedures do not work automatically. They require lawyers and judges who possess both keen intellect and moral courage because law is always in danger of being subverted by politics, and legal forms are always capable of being corrupted towards political ends.  Of course, Greece in the 60's is not America at the end of the millennium, but I think we can find situations in recent American legal history analogous to the events portrayed in "*Z*". The parallels with the Watergate Scandal are quite striking. Both were politically motivated crimes which an official cover-up attempted to pass off as petty crimes. And in both situations, the attempts at cover-up were defeated by the slow accumulation of evidence by skilled government attorneys.  Unfortunately, the "good guys" don’t always win. In the 1980's Special Prosecutor Lawrence Walsh and a team of skilled lawyers painstakingly put together a strong case against government officials for their subversion of the Constitution in the Iran-Contra scandal. But Attorney General Edwin Meese was able to foil the prosecution in the name of "national security." Politics always threatens to undermine the autonomy of law. In fact, a coda to "*Z*" explains that the final consequence of the young judge’s heroic actions was a military coup.  If law hopes to be successful in achieving justice, it must always remain impartial. In "*Z*" the young judge’s political naivete proved a strength because no one doubted the integrity of his findings. Here we can use the impeachment of President Clinton for perjury and obstruction of justice as a negative lesson. Special Prosecutor Kenneth Starr violated this first rule of the "law of rules"-- the appearance of impartiality. The truth or falsity of Clinton’s testimony very quickly got lost in the argument over whether or not the impeachment was a Republican vendetta against the President.  I guess the relationship between law and justice will always remain problematic. But it’s a problem which can at least sometimes be solved by lawyers who are smart enough, work hard enough, and have sufficient courage. It’s doesn’t always work, but–no matter what Clint Eastwood says–it beats lawlessness.  *Posted November 9, 1999*  **Would you like to comment on this article? 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