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Illustrations of Situations in The Legal System

Fairness of trial procedures, as portrayed in different films as well as in everyday life, are shaped by incentives, structures, motivations and biases. This affects the carrying out, interpretation and meaning of commands that the legal system is in place to perform. Variations in legal systems are affected by each of these factors. Euzhan Palcy's *A Dry White Season* and Hirokazu Kore-eda's *The Third Murder* depict two different legal systems of different countries and trials held within them.

One way in which the legal system is shaped is by the incentives of actors. The incentives of attorneys, clients, judges and the legal system itself are different and often work directly against each other by preference asymmetries. Attorneys work for fees while clients want to pay as little as possible as explained, "The lawyer has often been accused of stirring up unnecessary litigation... The strong incentive of possible fee motivates the lawyer to promote litigation which would otherwise never have developed" (Blumberg 28). As a result of this preference asymmetry and other factors, "...there is also a growing acknowledgment of this system's limits and failures. Victims, offenders and community members often feel that justice does not adequately meet their needs" (Zehr 2). *A Dry White Season* depicts just this when Ngubene and his wife Emily are left without answers as to the whereabouts of their son. Later in the film, Emily and the community are also left without answers as to death of her husband. Because of the incentives of actors or of

the legal system- here, one that does not take the community into consideration, some clients are left at a disadvantage.

Aside from preference-asymmetry, instances of informational asymmetry are also emphasized. This illustrates the legal system and the structure of the relationship of the actors as principle-agent. Informational asymmetry occurs because attorneys rarely know the complete situation and clients do not know how well or what lawyers are doing: “Much of the conversation between lawyers and their clients is educational: lawyers provide knowledge of how particular legal processes work and introduce their clients to ways the law might be used in their favor (Sarat and Felstiner 1964). *A Dry White Season* and *The Third Murder* both portray this principle-agent structure. In South Africa, Ben Du Toit, a friend to the defendant, is told that there is little that can be done and that although he may want to see justice be served, it would be difficult given the ideas and preferences of the time and place as well as those working in the legal system. Similarly, *The Third Murder* presents many scenes in which the defendant is being informed by his lawyers that it would be smart for him, Misumi, to testify he did not intend to rob but rather only murder in order to try and avoid the death penalty. A principle-agent structure leaves room for influence that can work to make a trial more or less fair.

This persuasion of clients to plead guilty by lawyers is known as ‘cooling out’. Lawyers will often implement this method because they have motivation to: “serve three major functions... First, he must arrange for his fee; second, he must prepare and then, if necessary, “cool out” his client in case of defeat (a highly likely contingency); third, he must satisfy the court organization that he has performed adequately in the process of negotiating the plea... (Blumberg 27). *The Third Murder* presents a scene in which Misumi’s lawyers, the prosecution, and the judge on the case all meet to discuss the changing of Misumi’s plea. Here, the defense as

well as the prosecution initially want to start a new trial because they have not prepared for the change of plea. However, the judge makes it clear that the trial needs to continue that same day. This is an example of how a method of “cooling out”, driven by the lawyer’s motivation for the defendant to avoid the death penalty, can call on a separate motivation: to satisfy the court organization.

Lastly, legal systems are shaped by biases, whether they be from the system itself or from relationships of actors. Lawyers being loyal to the legal system is an example of how a bias may affect the fairness of a trial as the legal system is “grounded in pragmatic values, bureaucratic priorities, and administrative instruments” (Blumberg 19). Lawyers have access to information and have connections with others that can bias the judge in one direction or another. This is more evident when there are “repeat players” involved rather than “one-shotters” as claimed, “Some of the ‘lawyer regulars’ are highly visible as one moves about the major urban centers of the nation... Their political “visibility” in terms of local club house ties, reaching into the judge's chambers and prosecutor’s office, are also deemed essential to successful practitioners (Blumberg 20-21). In *A Dry White Season*, the prosecution had connections that allowed expert testimonies to lie for Captain Stoltz. Another bias presented in the film is that of prejudice against others on the basis of race. Ben Du Toit first believes that Ngubene’s son must have committed some wrong act or else the police would not have detained him because he believes the police to be a good and just entity. Later, in the trial, the bias of those taking place in the trial as well as those attending the trial against blacks is presented clearly. These biases tend to clearly make a trial more unfair.

Overall, the legal system of different countries is shaped by a number of factors including incentives, structures, motivations and biases. These factors change the fairness of trials in everyday life as well as in film. These characteristics of the legal system, as depicted in the films *A Dry White Season* and *The Third Murder*, help shape the perception of how different legal systems operate outside of the United States and how fair or unfair their trials are.

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