

## Narrative in Law and Life: Some Frequently Asked Questions (FAQ's)

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As an introduction to this issue of *The Second Draft*, I address some FAQ's about the role of narrative (as below defined) in law and in life. I hope these brief FAQ's might also double as a workable handout for teachers first introducing students to the importance of narrative in law and in life.

### Why should we study narrative?

I use the term “narrative” broadly as “a story.”<sup>1</sup> Deriving from the Latin, *historia*, the story is “[a]n account or a recital of an event or series of events.”<sup>2</sup> Since we are temporal beings whose lives play out as series of events (mental and physical), we by definition unfold as stories. If we are to understand ourselves and others, we must therefore understand the nature, opportunities, and limits of narrative.

These limits include inherited forms of narrative that restrict us where we do not push back. As Alasdair MacIntyre puts it:

We enter human society . . . with one or more imputed characters—roles into which we have been drafted—and we have to learn what they are in order to be able to understand how others respond to us and how our responses to them are apt to be construed. . . .

Deprive children of stories and you leave them unscripted, anxious stutterers in their

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<sup>1</sup> THE AMERICAN HERITAGE DICTIONARY 907 (3d ed. 1992). This is a broader usage than employed by Amsterdam and Bruner, who define narratives as “. . . stories that illustrate what happens when a [model or canonical story] is thrown off track or threatened with derailment.” ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW 45 (2002).

<sup>2</sup> THE AMERICAN HERITAGE DICTIONARY, *supra* note 1, at 1339.

actions as in their words. Hence there is no way to give us an understanding of any society, including our own, except through the stock of stories which constitute its initial dramatic resources.<sup>3</sup>

We must thus grasp narrative for self-understanding, for understanding others, and for understanding how others view us and those depending upon us. Where current or inherited stories fail us or those depending upon us, we must understand how to tell better stories with equal or greater plausibility.

### **Does narrative have a basic overarching form or forms?**

Yes. Since a story is “[a]n account or a recital of an event or series of events,”<sup>4</sup> a story’s most basic form is perhaps just the recounting of some person or thing (or some persons or things) moving from any point (or number of points) to another point (or number of points) in time. This basic form allows infinite permutations and lawyers need the best of these forms for their purposes.

Amsterdam and Bruner give us one powerful candidate for best plotting such narrative movement: a five-part structure involving (1) an “initial *steady state*,” (2) a “*Trouble*” that disrupts the initial steady state, (3) “. . . *efforts* at redress or transformation, which succeed or fail,” (4) “. . . [an] old steady state . . . *restored* or a new (*transformed*) steady state . . . created,” and (5) possibly a concluding “*moral of the story*.”<sup>5</sup>

This five-part structure seems particularly useful for lawyers because our clients come to us with problems needing solution. We need to understand the state preceding the problem, the trouble that caused the problem, the desired new “steady state,” and the best means to the end of achieving that new “steady state.” Understanding the “moral” of the “tale” is also important. If

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<sup>3</sup> ALASDAIR MACINTYRE, *AFTER VIRTUE* 201 (1981).

<sup>4</sup> THE AMERICAN HERITAGE DICTIONARY, *supra* note 1, at 1339.

<sup>5</sup> AMSTERDAM & BRUNER, *supra* note 1, at 113–14 (italics are in the original).

the matter is a transactional one, we need to understand what is right for the parties so that we construct a win-win deal if that is at all possible. If the matter is one of litigation, we want to understand and articulate the justice of our client's position to increase the chance that we prevail.

### **How does framing drive narrative?**

In constructing the "moral" of our tale as well as discerning the best means to achieve the desired new "steady state," we must understand the role and flexibility of framing in narrative. In any such understanding, we can often plausibly reject inherited or opposition frames. Of course, to understand this, we also must take care to be conscious of the frames in play.

To illustrate, we might take Wittgenstein's famous example of a drawing that on its face can just as plausibly picture a duck or a rabbit.<sup>6</sup> If we represent a client whose duck was stolen (the "Trouble") and believe that a similar picture is actually a drawing of the duck made by the thief, we will want to frame the drawing as one of a duck. If we step into a courtroom where everyone is speaking of a rabbit drawing, we will of course want to push back. Our opponents may have framed first but we can reframe and resist.

### **How do concepts drive narrative?**

To talk about someone's or something's journey through time, we must be able to clearly refer to them. Without getting into the philosophical weeds about how we do this, we can, among other ways, name them, use contextually-clear pronouns, or describe them.<sup>7</sup>

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<sup>6</sup> LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 194 (G.E.M. Anscombe trans., Pearson 3d ed. 1972) (1953).

<sup>7</sup> See ALAN CRUSE, *MEANING IN LANGUAGE: AN INTRODUCTION TO SEMANTICS AND PRAGMATICS* 392-96 (outlining some possible ways to refer and some questions about them). Though the mechanics of how we do this can be questioned, Cruse correctly notes that ". . . the job of the speaker is to give enough information to uniquely specify the referent within some limited domain." *Id.* at 393.

For example, if I want my story to be about George Washington and not Thomas Jefferson, I can use Washington's name or I can use some descriptive term or phrase such as "the first President of the United States." To do the latter, to describe persons or things, I need descriptive categories that can single out such persons or things.

As Amsterdam and Bruner note, "To put something in a category is to assign it meaning, to place it in a particular context of ideas."<sup>8</sup> As the second part of this quotation indicates, categories bring with them their "context of ideas" and the careful storyteller is conscious of, and careful to understand, this broader context and the various ways such context may be framed. A female judge, for example, once responded to a recusal motion in a case of gender discrimination that all judges have gender.<sup>9</sup>

#### **What can we do when we lack the necessary concepts for the narrative we need to tell?**

When we lack concepts that specifically apply to a given situation, we must either create new concepts or "stretch" the ones that we have. To "stretch" a concept, we can use analogy or simile (X is like Y) or we can use metaphor (X is Y).<sup>10</sup>

For example, to tell stories from our laboratory we might view atoms as little solar systems where electrons are planets that revolve around a nucleus of protons and neutrons. In so doing, we will be focusing on the similarities between the two parts of the equation and ignoring the dissimilarities.

Of course, good lawyers ignore nothing of potential relevance and will always be cognizant of both suppressed dissimilarities and of problematic implications of metaphors

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<sup>8</sup> AMSTERDAM & BRUNER, *supra* note 1, at 28.

<sup>9</sup> *Id.* at 28.

<sup>10</sup> GEORGE LAKOFF & MARK JOHNSON, *METAPHORS WE LIVE BY* 5 (1980) ("The essence of metaphor is understanding and experiencing one kind of thing in terms of another" (italics omitted)).

chosen. A solar-system atom, for example, might imply that neutrons and protons are hot while electrons are colder like planets. It might also imply that electrons are solid and particulate like planets. The metaphor presumably ignores such things as moons of planets, comets and other things within solar systems. This may ultimately work or it may not depending on how close the correlations must be for purposes of the narrative.

Interestingly, despite all the admonitions of our English teachers, there are times when metaphors should be mixed. Staying with laboratory examples, quantum mechanics tells us that light can be explained as both a particle and a wave.<sup>11</sup> Of course light is not a particle (at least in the sense of the dust particles that traverse its beams) nor is it a wave (at least in the sense of waves that wash the beach under its beams). *A fortiori* is it therefore not a combination of these contradictory things. Yet, just such a mixed metaphor can be required for good science.<sup>12</sup>

### **Are there basic storylines that repeat?**

Yes. Ruth Anne Robbins, Steve Johansen, and Ken Chestek provide seven good examples: (1) a person against herself, (2) a person against another person, (3) a person against society (or the reverse), (4) a person against a machine or institution, (5) a person against nature, (6) a person against God, and (7) God against persons.<sup>13</sup> Though I do not claim this list exhausts the basic possibilities, knowing these seven basic types helps lawyers invent compelling narratives.

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<sup>11</sup> Franco Selleri, *Preface to WAVE-PARTICLE DUALITY* (Franco Selleri ed. 1992); *see also generally* B. H. Bransden & C. J. Joachain, *Quantum Mechanics*, 760 (2nd ed. 2000).

<sup>12</sup> *See again supra* note 11. Of course, our English teachers rightly condemned carelessly-mixed metaphors. For example, “Life’s whale ate Jonah then it licked its paws” ruins otherwise good iambic pentameter.

<sup>13</sup> RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT’S STORY: PERSUASIVE LEGAL WRITING* 96 (2013).

### **Are there basic character types that we reuse?**

Yes. We no doubt reuse various prominent character types in narrative. These include such archetypes as Hero, God, Savior, Creator, Self, Father, Mother (including Earth Mother, Nurturing Mother, Devouring Mother), Child (including Divine Child, Eternal Child), Explorer, Wanderer, Outlaw, Monster, Devil, Scapegoat, Victim, Sage, Fool (including Wise Fool), Trickster, Tyrant, and Warrior.<sup>14</sup> One character may exhibit one or more of these archetypes. For example, an Eternal Child could also be a Wanderer and a Trickster.

Additionally, literature shows common traits that reappear in stock characters.

Theophrastus, for example, long ago listed the following such traits:

Dissembling, Flattery, Idle Chatter, Boorishness, Obsequiousness, Shamelessness, Garrulity, Rumor-Mongering, Sponging, Pennypinching, Obnoxiousness, Bad Timing, Overzealousness, Absent-mindedness, Grouchiness, Superstition, Gripping, Mistrust, Squalor, Bad Taste, Petty Ambition, Lack of Generosity, Fraudulence, Arrogance, Cowardice, Authoritarianism, Rejuvenation, Slander, Patronage of Scoundrels, [and] Chiseling.<sup>15</sup>

Though I do not claim that these lists exhaust the basic possibilities, knowing them also helps lawyers invent compelling narratives.

### **Can narrative drive the results of a Supreme Court case?**

Yes! Linda Edwards give us a good example with *Hamdi v. Rumsfeld*.<sup>16</sup> In this case, a U.S. citizen was born in Louisiana, relocated to Saudi Arabia with his parents, and was later captured in post September 11 violence. He was imprisoned in Afghanistan, Guantanamo, and

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<sup>14</sup> See, e.g., *id.* at 90; JOS VAN MEURS, *JUNGAN LITERARY CRITICISM: AN ANNOTATED CRITICAL BIBLIOGRAPHY OF WORKS IN ENGLISH 1920–80* (1991); 1 *AN ENCYCLOPEDIA OF ARCHETYPAL SYMBOLISM* (Beverly Moon ed., 1997).

<sup>15</sup> THEOPHRASTUS, *CHARACTERS* 48–49 (I. C. Cunningham trans., Loeb 1993) (numbers, Greek terms, and commas omitted for ease of reference).

<sup>16</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

then in U.S. military jails. As Linda Edwards puts it, “The administration did not disclose its allegations against him, and he had no opportunity to refute them. The government argued that because the United States was under attack by terrorist forces, it could keep Hamdi . . . . essentially for as long as it chose.”<sup>17</sup>

As Prof. Edwards deftly maintains, the case turned on competing narratives: the “myth of redemptive violence” where the executive branch needed a “virtually free hand” to protect us from a world described as “an overwhelmingly dangerous place”<sup>18</sup> vs. the story of “the hard-won freedoms secured [for American citizens] by the American Revolution and the founding of the Nation.”<sup>19</sup>

As Prof. Edwards notes, the Supreme Court found the “hard-won freedoms” narrative more compelling and ruled that Hamdi could not be indefinitely detained without a trial. In doing so, “[t]he majority of the Supreme Court saw the arguments primarily through the lens of the American story establishing the liberty and safety of citizens as against an unconstrained Executive.”<sup>20</sup>

As Prof. Edwards also notes, examining such narratives allows us to ask questions of great importance. It allows us to question such things as whether revenge can really heal us, whether following the rule of law really weakens us, and whether violence is “the only effective answer to human evil.”<sup>21</sup>

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<sup>17</sup> Linda H. Edwards, *Where Do the Prophets Stand? Hamdi, Myth, and the Master’s Tools*, 13 CONN. PUB. INT. L.J. 43, 60 (2013).

<sup>18</sup> *Id.* at 61–63.

<sup>19</sup> *Id.* at 64.

<sup>20</sup> *Id.* at 66.

<sup>21</sup> *Id.*

### **Can narrative drive transactional practice?**

Yes! As in litigation, parties who construct the better narratives increase their chances of prevailing in their negotiations. In negotiations, good narratives account for the interests of all the parties and, if possible, show how the story teller's desired results achieve a new "steady state" that is a win-win for all.

Additionally, basic contract form permits documentation of these narratives for future readers, interpreters, and enforcers of contracts. Recitals allow parties to tell their transactional story and a good lawyer does not waste the story-telling opportunities recitals provide. In the event future disputes arise, the recitals stand ready to tell their story again.

### **Finally, how does narrative's importance underscore the importance of an education in the humanities?**

As the above answers show, the more stories and character types that one knows, the more ammunition one has to be a lawyer. Lawyers with such knowledge start well ahead of lawyers who lack it.

For what it is worth, I would advise the lawyer lacking a liberal arts background to begin with the complete Shakespeare. As Jane Austen notes:

[Shakespeare's] celebrated passages are quoted by everybody; they are in half the books we open, and we all talk Shakespeare, use his similes, and describe with his descriptions . . . .<sup>22</sup>

In Shakespeare one finds a plethora of the personality and quandary types one faces over the years. The older I become and the more I see, the more I appreciate the incredible scope of Shakespeare's genius. A lawyer who has never met Falstaff or Prince Hal or the rest of Shakespeare's universe is surely at a disadvantage to the lawyer who has.

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<sup>22</sup> 1 JANE AUSTEN, *Mansfield Park*, in THE COMPLETE NOVELS OF JANE AUSTEN 553, 797 (Modern Library 1992).



That is not to say that lawyers can dispense with other works. I of course greatly value my marked-up volumes of Homer, Aeschylus, Sophocles, Euripides, Virgil, Chaucer, Dante, Villon, Du Bellay, Racine, Molière, Marlowe, Milton, Fielding, Hawthorn, Melville, George Eliot, Jane Austen, Hardy, Balzac, Poe, Borges, and Faulkner just to name a few.<sup>23</sup> As one who appreciates the importance of literature in life and in practice, I am thrilled to hear others' thoughts on these volumes and on the countless works that I have unfortunately missed in my own studies (including non-Western works neglected in Western canons).

With these introductory thoughts, I now commend the articles and essays that follow in this issue of *The Second Draft*.

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<sup>23</sup> Perhaps I should not have hazarded this incomplete list of my own preferences but it gives (for whatever it is worth) a small window into what has moved me over the years. Again, I am always happy to discuss particular volumes with others and hear their suggestions about the countless works that I have missed in my own studies.