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Narrative Transactions - Does the Law Need a Narratology?

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Abstract

I have for some time been puzzled about the status of narrative in the law, particularly the status of talk about narrative in the law. On the one hand, the plenty of legal scholarship-starting more or less from the "story" in the Law Review in 1989 - on the uses (and the virtues) of "story" in the law, and even before that there was Robert Cover's foundational work on narrative, has become something of a commonplace - too much of one - that the virtue of presenting the lived experience of marginalized groups is the virtue that traditional legal reasoning doesn't. This view has of course been questioned. On the other hand, I am not aware that all this story-telling has made a difference to legal actors. Trial advocates tell stories - they have clinical training in advocacy includes some attention to constructing a story to tell in the courtroom (which of course echoes the training in rhetoric in antiquity, when rhetoric and the law were inextricably intertwined). It is assumed that juries often decide verdicts on the basis of the story presented at trial.

Yet you search in vain for any explicit recognition by legal decision-makers that the story that is told can make a difference in legal outcomes. That is not to mention moments when the law notes that a story has been mis-told, or that the rules (of evidence, for instance), or doesn't make sense as told. Yet to some degree the enforcers of rule-governed storytelling. Yet they do not talk. They are conspicuously lacking in the analytic vocabulary

"narratology," for instance. Narratology - which I shall discuss - distinguishes between events in the world and the ways in which we tell narratives. It pays attention to the parts of narrative and how we understand the initiation and completion of an action sequence (stock stories, one might say); and to the movement from a state of disequilibrium to a final outcome that reestablishes order. It studies perspectives of telling: who sees and who tells, the experience of the teller to what is told, the varying temporal modalities between what I know of only one instance when the Supreme Court shows a narratological awareness of narrative as a category of thought (I'll come back to it later), and it has not produced a sequel.

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