

Review Essay

Making Sense of *Making Stories: Law, Literature, Life**

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In Making Stories: Law, Literature, Life, Jerome Bruner explores the use of stories in life and in the law to demonstrate that stories are as indispensable to human experience as logic and science. Mr. Rao evaluates Bruner's arguments, focusing in particular on his discussion of the role of narrative in the law.

¶1 In *Making Stories: Law, Literature, Life*,¹ Jerome Bruner explores the nature of stories and the way in which we use them to navigate the tangled web of human experience.

¶2 Stories are instinctual, Bruner argues, and we understand intuitively how they work. Rarely, however, do we take time to reflect on why they compel us, why they have such power to shake our assumptions and disturb our peace of mind, or how they impact those human institutions—such as the law—that we take for granted as rooted in logic and reason.

¶3 Bruner sets out to “hoist” us beyond the level of intuition. He argues that stories are the building blocks of human experience. They are the essential ingredients in the melange that we call the “self”; they are the guideposts for our interaction with others; and they are the fuel for the engine that drives one of the most dominant human institutions—the law.

¶4 All four chapters of *Making Stories* hover around the central theme that narrative² plays a role as indispensable as logic, reason, and science in explaining human experience. This theme reflects the growing body of scholarship over the last two decades that explores narrative as a means of constructing reality and

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1. JEROME BRUNER, *MAKING STORIES: LAW, LITERATURE, LIFE* (2002). Bruner is a psychologist and educator whose career has centered around research on perception, learning, memory, and other aspects of cognition, especially in young children. He has written many seminal works on education and cognitive studies. Bruner received his doctorate in psychology from Harvard University in 1941. He has taught psychology at Harvard University and Oxford University, and is currently a professor at the New School for Social Research, New York City, and a fellow at the New York Institute for the Humanities, New York University, where he is studying law as practiced, and how its practice can be understood through methods developed in anthropology, psychology, linguistics, and literary theory.
2. The terms “narrative” and “story” are used interchangeably throughout the text. For Bruner, a narrative/story is an account of events in which a reversal in expectations is recognized and resolved. *Id.* at 4–5.

shaping our perception of it.³ The emphasis on narrative as a fundamental component of human experience represents a significant shift from the science-centric cognitive revolution of the 1960s, during which narrative was ignored as a means of explaining human experience.⁴

¶5 This essay will emphasize Bruner's discussion of the role of stories in the law. But first, let us look briefly at his definition of a story, and his discussion of the role of narrative in our daily lives.

The Role of Stories in Daily Life

¶6 For Bruner, a story is distinguished from a routine sequence of events by a *peripeteia*—a sudden reversal in circumstances: “a seeming true-blue-English Oxbridge physician turns out to have been leaking atomic secrets to the Russians, or a presumably merciful God all of a sudden asks the faithful Abraham to sacrifice his son Isaac.”⁵ In a completed story, this breach in expectations is recognized and resolved.

¶7 Because we are constantly immersed in stories, Bruner argues, we come to expect, even to hope for, that sudden breach in the ordinary state of affairs that accompanies any story. Like scientific discoveries, stories show us ways to cope with error and surprise in our daily lives. And those stories that are widely circulated become “collective coins” that begin to illuminate our world by revealing alternative ones. Harriet Beecher Stowe's *Uncle Tom's Cabin*, for example, helped to transform the way Americans of the mid-nineteenth century viewed slavery. Stowe's readers began to see slaves as human beings, subject to the same joys and sorrows as everyone else.⁶ *Uncle Tom's Cabin* gradually altered the “sensibility” of the nation; the Civil War and the Emancipation Proclamation, Bruner argues, were inevitable consequences.

¶8 We are not always eager, Bruner says, to display our predilection for stories. Whereas the rigid truths of logic and science convey purity and innocence, the traits of rhetoric and persuasion inherent in narrative arouse our suspicion.⁷ Indeed, Bruner argues, in many human institutions, such as the law, we strive to mitigate the influence of narrative through strict adherence to ritual and procedure, and by appealing to logic and reason as our *modus operandi*.

3. For a brief history of the subject of narrative and the evolution of the idea that narrative plays a role in shaping our conception of reality, see *id.* at 109–12 n.1.

4. Bruner himself did not always envision such a prominent role for narrative in terms of understanding and explaining human experience. At the time of *JEROME BRUNER, ON KNOWING: ESSAYS FOR THE LEFT HAND* (1962), he believed that narrative could be parsed and dissected like any object of science—that “the scientific method could tame ordinary narrative into testable hypotheses.” Bruner now concedes that he was “profoundly mistaken.” *BRUNER, supra* note 1, at 101.

5. *BRUNER, supra* note 1, at 5.

6. *Id.* at 10.

7. *Id.* at 5.

The Role of Stories in the Law

¶9 In a U.S. courtroom, many institutional constraints and obstacles impede the flow and filter the content of legal stories—the question-and-answer format of witness examination, the conflicting set of events that is brought out by witness testimony, the rules of evidence, the oath to tell the truth and the accompanying threat of perjury, etc.—resulting in a distilled set of facts that is, allegedly, “self-evident, hostile to the fanciful, and . . . untailed.”⁸ The sense of ritual, decorum, and history that pervade any courtroom, confers upon the proceedings an air of objectivity and universality, far removed from the emotional and psychological twists and turns of drama. But the facade of universality and objectivity is permeable. Everyone knows, Bruner asserts, that lawyers are “committed to an adversarial rhetoric,” and that the opposition between competing narratives in the courtroom creates drama that captivates participants and observers.⁹

¶10 In the common law, the semblance of universality is maintained through adherence to the doctrine of *stare decisis*.¹⁰ The legitimacy of a court’s decision rests on the assumption that it is based upon precedent. But attorneys exercise great ingenuity in selecting from an available set of precedents one or more decisions from which to base an argument before a judge, and they must bring all their rhetorical powers to bear to convince the judge that their selection is mandated by precedent. Though lawyers may cloak their arguments with the mantles of reason and logic, their search for applicable precedent is essentially an attempt to locate their stories within a “genre of similar stories.” Attractive nuisance, for example, is an offense that occurs when one person is lured into a danger created by someone else that serves as “irresistible temptation” to the victim.¹¹ There is no absolute and universally accepted definition of “irresistible temptation.” The attorney must attempt to draw a sense of a definition from a line of precedent that tells similar stories.¹²

¶11 Though we hold legal proceedings at a high level of suspicion, and we understand that attorneys constantly employ their rhetorical arsenal to steer courtroom narratives along a desired path, Bruner asserts that we nevertheless maintain our confidence in the legitimacy of the legal system. The glue that binds us to the courts is simply the old-fashioned storytelling that permeates lawyers’ arguments; the use of “garden variety narratives” in legal pleadings is the “common person’s portal into the arcane realm of law.”¹³

¶12 Because law and narrative are so inextricably interwoven, law can never be isolated from our perceptions of the world. Our perceptions of life find expression

8. *Id.* at 48.

9. *Id.* at 42.

10. *Id.* at 43.

11. *Id.* at 9.

12. *Id.*

13. *Id.* at 47, 48.

in stories—in the works of Conrad, Dickens, Tubman, and Trollope, as well as in newspaper stories and bar tales.¹⁴ Shared stories create an “interpretive community,” which serves not only to strengthen cultural cohesion, but to impact the way in which lawyers tell stories and how judges categorize them.¹⁵ Bruner points to the history behind the U.S. Supreme Court’s decision in *Brown v. Board of Education*¹⁶ as an example of how certain narratives resonate so powerfully that they foment monumental changes in the corpus juris. In *Brown*, the Court held that segregation in schools—regardless of whether or not material facilities in black schools met the standards of white ones—was a violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. This momentous decision followed *Plessy v. Ferguson*,¹⁷ decided almost sixty years earlier, in which the Court held that “separate but equal” railroad cars for blacks and whites met the Fourteenth Amendment standard. What had changed in fifty years?

¶13 American narratives about race, Bruner argues, had altered drastically in the years between *Plessy* and *Brown*. Segregation under Jim Crow had darker and more sinister implications after the war against Hitler had brought to light the Nazi concentration camps and the Nuremberg decrees.¹⁸ And in the literature that sprang from writers of the Harlem Renaissance, such as Langston Hughes and Richard Wright, there was “inward turn” in narrative that focused on the psychological effects of being forced to occupy a separate railroad car or the back of a bus. “The Harlem Renaissance had given equal protection its subjective story—if not in the corpus juris, then in the popular imagination.”¹⁹

¶14 Of course, Bruner argues, since that time, the story of segregation has been given a “new reading.” The new story is about protecting whites from the effects of “reverse discrimination” and is reflected in recent case law.²⁰ Bruner emphasizes, however, that these changes in the law did not come about through reasoned adherence to the doctrine of legal precedent, but through a “narrative dialectic”—a continuous struggle between opposing stories that inevitably infiltrated the courtroom.²¹

Narrative and the Creation of “Self”

¶15 Having established that stories are intrinsic to human experience and the lifeblood of our legal system, Bruner takes on the relationship between narrative and the “self,” and makes what is perhaps his boldest claim in the book.

14. *Id.* at 60.

15. *Id.* at 25.

16. 347 U.S. 483 (1954).

17. 163 U.S. 537 (1896).

18. BRUNER, *supra* note 1, at 54.

19. *Id.* at 55.

20. *Id.* at 56. Bruner points to the Fifth Circuit’s decision in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), which held that an educational institution must be color blind when making student admissions decisions.

21. *Id.* at 57.

¶16 “There is no such thing,” he says, “as an intuitively obvious and essential self to know, one that just sits there ready to be portrayed in words.”²² Rather, the self is a constantly evolving conglomeration of our internal and external experiences. And because so much of our experience is formed through listening to and telling stories, selfhood and narrative are inextricably interlinked.

¶17 Certain aspects of selfhood, Bruner concedes, are innate—the sense of our physical selves, and our continued identity over time, for example.²³ But much of what we conceive of as “self” is shaped by our own efforts. Rather than passive recipients of “events” that must be encoded by language, we are active shapers of our experience. Through language, we create “events” out of our experiences; through stories, we give these events coherence and continuity.²⁴

¶18 Like any story, Bruner argues, “self” is something that we must continually tell ourselves and others about before it can be understood. We tell and retell the arc of our lives in narrative form, because narrative is how we make sense of interactions with others, and it is our natural way of identifying and talking about expectations that have gone awry.

¶19 Because we exist and interact in human cultures, how we tell stories about ourselves depends in large part on our assessment of how we are viewed by others:

Telling others about oneself is . . . no simple matter. It depends on what *we* think *they* think we ought to be like—or what selves in general ought to be like. Nor do our calculations end when we come to telling ourselves about ourselves. Our self-directed self-making narratives early come to express what we think others expect us to be like. Without much awareness of it, we develop a decorum for telling ourselves about ourselves: how to be frank with ourselves, how not to offend others. . . .²⁵

¶20 It turns out, then, that self, which we associate with autonomy and free will, “is also other.”²⁶ Any self-making narrative, therefore, requires a delicate “balancing act,” creating on the one hand a sense of autonomy, free will, and possibility, and on the other a bridge to the outside world.²⁷ When the balance is upset, we lose our ability to function. Bruner points to a condition known as *dynarrativa* which is associated with diseases such as Korsakovs syndrome and Alzheimer’s. *Dynarrativa* is an impairment in the ability to tell or understand stories. Victims lose their ability to read the thoughts, feelings, and intentions of others, and, consequently, their ability to self-narrate.²⁸ In such victims, Bruner notes, the concept of self vanishes entirely.

22. *Id.* at 64.

23. *Id.*

24. *Id.* at 73.

25. *Id.* at 66.

26. *Id.*

27. *Id.* at 78.

28. *Id.* at 86.

The Importance of Narrative in Human Experience

¶21 Bruner's final chapter synthesizes the entire book and reemphasizes the thrust of his argument—that narrative holds a place as important as logic, reason, and science in explaining human experience. As such, Bruner warns, by isolating narrative from “the facts,” we dangerously narrow the scope of our experience. Bruner points to recent discoveries in the field of medicine that suggest that stories play a critical role in combating illness or disability. The program in narrative medicine at Columbia University's College of Physicians and Surgeons was created in response to discoveries that patients suffer when doctors fail to pay attention to their stories. Many physicians followed their patients' histories conscientiously, but they were so concerned with getting the facts straight that they simply failed to hear the stories their patients told them. Consequently, the doctors often failed to pick up on hints that a particular treatment was not working.²⁹

¶22 At the Occupational Science Department at the University of Southern California School of Medicine, there is a program focused on increasing the odds of success in physical therapy for children recovering from debilitating illnesses. The USC program staff reached the conclusion that reason alone is insufficient as a method of persuasion to convince a child to participate fully and enthusiastically in an exercise regimen.³⁰ Persuasion must include a narrative of recovery that casts the child as a character in some sort of drama—a sheriff in the Wild West, or a detective in a mystery, for example.³¹

Evaluation and Conclusion

¶23 Throughout the book, Bruner advocates his position in a style that is elegant yet accessible. His ability to construct a coherent argument that encompasses so many fields—psychology, the cognitive sciences, anthropology, mythology, law, and medicine—is impressive.

¶24 The book targets a lay audience, and therefore has more the feel of an essay than a scholarly research text. Even so, Bruner does cite scholars from a wide range of disciplines, and his arguments seem to draw a good deal on his own experience as a psychologist and anthropologist. The book also demonstrates impressive familiarity with a broad spectrum of academic disciplines.

¶25 There are two glaring oversights, however, with respect to Bruner's research on the role of stories in the law. The first concerns his failure to mention any scholarship from the academic movement known as law and literature. Bruner points to the history behind the Supreme Court's decision in *Brown v. Board of Education* as an example of how narratives can have a profound effect on the cor-

29. *Id.* at 105.

30. *Id.* at 107

31. *Id.*

pus juris. Bruner's exposition of his argument is eloquent and intuitive, but he only skims the surface of what has now become an ocean of scholarship devoted to the notion that law and literature have an integral, dynamic relationship.

¶26 Within the past decade, new specialized professional journals, such as the *Yale Journal of Law and Humanities* and *Cardozo Studies of Law and Literature*, have arisen to meet increasing interest and demand in the field of law and literature. The movement now has many subspecialties and varied methodologies³² that explore the symbiotic relationship between the two disciplines. Should lawyers read literature? Will reading more teach them about human nature and allow them to move beyond reliance on abstract reason? Will this make them better lawyers? These are just a few of the questions considered by law and literature scholars. Bruner could only have enriched his commentary by addressing some of these issues.

¶27 Bruner's second oversight with respect to his research concerns his discussion of the role of stories in the courtroom. He guides us with authority through the process of how lawyers tell their stories in the courtroom, and he argues convincingly that legal problems are more often decided by lawyers' abilities to weave convincing narratives than by reason or logic. But does he tell us anything we don't already know?

¶28 Few would dispute the contention that stories are prevalent in our legal system. The fascination with the narrative of the fallen celebrity that permeated the trial of O.J. Simpson, for example, is a fair indication that narrative drama can be more persuasive than factual data such as DNA evidence, and that lawyers often manipulate facts to tell their stories.

¶29 The idea that reason and logic are not the primary means by which juries make their decisions, however, is not a recent one. As Cicero once said, "[M]en decide far more problems by hate, or love, or lust, or rage, or sorrow, or joy, or hope, or fear, or illusion, or some other inward emotion, than by reality, or authority, or any legal standard, or judicial precedent, or statute."³³

¶30 The important question seems to be not whether narrative predominates in the law over reason or logic, or whether fact finders are more likely to be persuaded by a good story than by the facts, but rather, once we know that the law is

32. In PAUL J. HEALD, *GUIDE TO LAW AND LITERATURE FOR TEACHERS, STUDENTS, AND RESEARCHERS* 6–17 (1998), four main schools of thought with respect to law and literature scholarship are identified: (1) Law in Literature—these scholars look for legal themes in particular works of literature; (2) Law and Literature as Language—these scholars see law and literature as serving similar functions, and emphasize the rhetorical nature of both disciplines; (3) Law as Literary Movement—these scholars explore the way in which the historical evolution of law parallels that of literature, philosophy, and the arts; and (4) Law and Literature as Ethical Discourse—these scholars believe that moral lessons learned from literature can be applied to specific legal problems.

Bruner's emphasis on the transformative power of stories within the law would put him closest to what Paul Heald calls the "Narrative Scholars," a subgroup of the Law and Literature as Language Movement. These scholars see stories as playing a similar role in law and literature—creating, binding, and transforming communities.

33. *Quoted in* WALTER R. FISHER, *HUMAN COMMUNICATION AS NARRATION* 37 (1987).

all about stories, what then? How do we separate the false stories from the true ones? What is it that makes a story plausible—does logic have a place in evaluating the coherence of stories? How do we reconcile “the facts” in a criminal trial with the multiple versions of events that the lawyers draw out from the witnesses?³⁴

¶31 Bruner’s failure to address these issues cannot be overlooked given the growing body of scholarship in recent years devoted to the role of narrative in the law. In *Law’s Stories: Narrative and Rhetoric in the Law*,³⁵ for example, nineteen scholars consider how and why stories function in the law. Had Bruner drawn on this literature, he might have expanded the scope of his discussion by at least touching upon the issues raised by the predominance of narrative in the law. Should stories be embraced as legal resources? What is the downside of emphasizing narrative in the courtroom? As Peter Brooks, one of the editors of *Law’s Stories*, points out, stories are not innocent, nor can they make any claim to the moral high ground over rhetoric, for “story telling is a moral chameleon, capable of promoting the worse as well as the better cause every bit as much as legal sophistry.”³⁶

¶32 On the whole, however, *Making Stories: Law, Literature, Life* is an eloquent essay on how stories function in everyday life, and on how they can serve as dynamic forces for change. Bruner compels us to take a closer look at what we have previously grasped only intuitively—that people communicate through stories.

¶33 In his book, *The Call of Stories: Teaching and the Moral Imagination*, Robert Cole recalls some advice he received as a resident psychiatrist from his supervisor and mentor, Dr. Ludwig: “The people who come to see us bring us their stories. They hope they can tell them well enough so that we understand the truth of their lives. They hope we know how to interpret their stories correctly. We have to remember that what we hear is their story.”³⁷ Stories, it seems, are much more than entertaining distractions from the ups and downs of life; they can be gateways to truths that are hidden behind the veil of “facts” that we primarily—often exclusively—concern ourselves with. This may be the most important message we can take away from Bruner’s book.

34. Bruner does tell us that we must find a way to reconcile the world of logic and science with the world of narrative, but he does not—at least with respect to his discussion of the relationship between law in the courtroom and narrative—take the extra step and make an explicit connection between the two. BRUNER, *supra* note 1, at 102.

35. PETER BROOKS & PAUL GEWIRTZ, *LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW* (1996). Many would consider the academic interest in the role of narrative in the law to be part of the law and literature movement. See *supra* note 32 and *id.* at 3 for further discussion.

36. *Id.* at 16.

37. ROBERT COLE, *THE CALL OF STORIES: TEACHING AND THE MORAL IMAGINATION* 7 (1989).