

COHERENCE, CORRESPONDENCE AND TRUTH IN LEGAL NARRATIVE

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Storytelling in the Law

Many advocates of storytelling explicitly contrast rational argument and the more directly emotive power of stories. As Gerald Lopez tells us, “Stories and storytelling de-emphasize the logical and resurrect the emotive and intuitive.” The “epistemological claim” of feminist narratives, according to Kathryn Abrams, is that there are ways of knowing other than “scientific rationality.” Radical feminist scholars—especially those using narrative as a methodology—thus reject the linearity, abstraction, and scientific objectivity of rational argument. Mari Matsuda similarly recommends noncognitive ways to know the good.

A Sad Story

- e₁. Johnny has gone missing at Leslie's birthday party.
- e₂. Judy left the same time.
- e₃. Johnny was holding Judy's hand.
- e₄. Johnny and Judy have reappeared together.
- e₅. Judy exhibits a disturbing expression and carriage – "like a queen with her king."
- e₆. Judy is wearing a (man's) ring (that appears to be Johnny's).

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- t₀. Johnny has taken up with Judy.

Inference to the Best Explanation

In making this inference one infers, from the fact that a certain hypothesis would explain the evidence, to the truth of that hypothesis. In general, there will be several hypotheses which might explain the evidence, so one must be able to reject all such alternative hypotheses before one is warranted in making the inference. Thus one infers, from the premise that a given hypothesis would provide a "better" explanation for the evidence than would any other hypothesis, to the conclusion that the given hypothesis is true.

Storytelling and Legal Argument

- The goal of storytelling in law is to persuade an official decision maker that one's story is true, to win the case, and thus invoke the coercive force of the state on one's behalf.
- O.J. Simpson
- *Obergefell v. Hodges* (2015)
- Privacy
- Torts
- Nature of law
- Critical race and gender

Inference to the Best Legal Narrative

- (Scientific) explanations
- (Legal) narratives
- Why-questions
- Legal why-questions
 - Why the bloody gloves?
 - Why does the Constitution protect gay marriage?
 - Why the link between tort history and increased economic efficiency?

Explanatory (Narrative) Virtue

There is, of course, a problem about how one is to judge that one hypothesis is sufficiently better than another hypothesis. Presumably such a judgment will be based on considerations such as which hypothesis is simpler, which is more plausible, which explains more, which is less ad hoc, and so forth. I do not wish to deny that there is a problem about explaining the exact nature of these considerations.

Explanatory and Narrative Skill

- Having a skill / describing a skill
- Truth-tracking
- Vision and truth-tracking
- Evolutionary explanations
- Storytelling as a human universal?
- Storytelling as an innate skill
- Adaptive value?
 - Social
 - Individual

Mind Reading

[Mind reading] is used by cognitive scientists, interchangeably with “Theory of Mind,” to describe our ability to explain people’s behavior in terms of their thoughts, feelings, beliefs, and desires. ... [T]his adaption must have developed during the “massive neurocognitive evolution” which took place during the Pleistocene (1.8 million to 10,000 years ago). The emergence of a Theory of Mind “module” was evolution’s answer to the “staggeringly complex challenge faced by our ancestors, who needed to make sense of the behavior of other people in their group, which could include up to 200 individuals.

Hard Cases

- Lack of legal intersubjectivity
- Rights thesis
- Right answer in legal scholarship?
- Evolutionary origins of narrative (explanatory) skill
- Judicial phenomenology
- Scholarly phenomenology

Narrative Truth

- Though truth *is* correspondence with the facts it cannot be *recognized* by its correspondence. We cannot rely on the facts to guide proofs of scientific theories since the facts are irretrievably at the outer end of the correspondence relation. ... So any indicators of truth must be internal. ... The process of justifying, then, is a process of comparing aspects of the system, and the accomplishment of justification is the demonstration of coherence among the aspects
- Correspondence theory
- Coherence theory
- Two kinds of legal truth