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Kathryn Abrams

Berkeley Law

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INTRODUCTION: THE PATHS OF STORIES

Kathryn Abrams

It has been two decades since narrative announced itself—as genre, style, substantive, and methodological challenge—to mainstream legal scholarship. This special issue and the annual series of which it is a part invite us to appreciate the richness of narrative and its contributions to legal analysis. They also enable us to observe the unfolding of the form, spurred by the innovations of its practitioners and subtler changes in the surrounding environment. Each of the pieces in this varied collection reflects a distinct path or trajectory of this provocative genre.

Anthony Chase and Mimi Wesson represent the fictional version of narrative, one pioneered by Derrick Bell, Richard Delgado, and others. The first-person narration and the incorporation of socially evocative details suggest the rendition of a personal history; yet, the narrative actually relies on a fictional alter-ego and an imagined setting to offer its commentary. But, while Bell’s elegy to the painful shortfalls of the civil rights struggle knowingly invoked the form of the biblical parable, Chase finds different sources of literary inspiration, most centrally the often fantastic fiction of Jorge Luis Borges. Chase’s meditation on the rule of law in a world of shifting alliances and bare-knuckle politics is mirrored by his fictional juxtapositions of abstract ideas and the palpable textures of daily life, of appearances and reality. His story breaks free of the more explicit pedagogy of early fictional narratives to explore more writerly gambits—the leisurely, luxuriant treatment of fictional detail, and a provocative multi-layered conclusion.

Wesson, too, combines elements of the quotidian and the fantastic, but in the substance rather than the style of her narrative. Her familiar, yet startling, story also presents the reader with enticing ambiguities. Does it suggest that legal academics, for all our intellectual pretensions, actually long to be “[of] this world,” or flourish in the presence of human connection? Or does it expose the celebration of style over substance in the faculty appointments process? Does her narrative suggest the plausibility of the most provocative proposal in Duncan Kennedy’s “little red book”? Or all of the above?

1 Anthony Chase, One Hundred Four, 76 UMKC L. REV. 801 (2008).
3 See, e.g., Derrick Bell, And We Are Not Saved: The Elusive Quest for Racial Justice (1987).
6 The reference to “this world” is taken from Wesson’s note about the Arabic meaning of “dunya,” the name of her central character. See Wesson, supra note 2, at 800 (“In Islamic terminology, the Arabic word dunya (الدنيا) means this world — and its earthly concerns and possessions — as opposed to more spiritual realms, or the hereafter.”).
7 In Legal Education and the Reproduction of Hierarchy, Duncan Kennedy memorably proposed that law school personnel rotate positions from time to time, with law professors trading places with custodial staff. Duncan Kennedy, Legal Education and the Reproduction of Hierarchy, 32 J. OF LEGAL EDUC. 591, 615 (1982).
If these fictional narratives demonstrate the scope of the form, the stories by Schneider, Secunda and Caplow demonstrate the range of its addressees. Legal storytelling began as a potent, experiential “j’accuse” aimed at legal decision-makers, but it has also been directed to other readers and institutions. Articles like The Legal Education of Twenty Women and Becoming Gentlemen, for example, used narratives to frame powerful challenges to the gendered character of legal education. Schneider and Secunda return to the law school as both the site and the target of their offerings. Secunda’s story of James K. and his quest for special education within the confines of a Mississippi children’s prison reflects the many virtues of the legal storytelling form. His discussion of the tensions between prison security, protective custody, and individual educational goals evokes the analytic complexity of a law school hypothetical; yet, his narration enriches these challenges with the affective understanding and non-zero-sum strategies that Secunda brought to his mediation task. Schneider’s reflection takes the narrative backward and forward in time. Recalling the connection between the personal and the political that marked feminist consciousness-raising, one of the early sources of narrative, she explains how an effort to engage with students as human beings, through the assignment of “reflection papers,” can enhance teaching and thinking about the law.

Stacy Caplow, whose contribution draws on both law school and practice experience, returns us to one of the earliest and most generative functions of narrative: demonstrating the distance between the world view of law “on the books,” and the human lives lived “on the ground.” Narrative, as Caplow demonstrates, can be the vehicle for exposing the failings of the legal status quo; but, as Secunda and Schneider make clear, it can also be the means of celebrating hard-won institutional victories or sharing generative innovations.

The experiential narratives offered by Michael Olivas and Matthew Fletcher are in one respect closest to the prototypical form: they offer situated, personal stories to illuminate the status or circumstances of a larger group. Fletcher’s story of a father encountering a daughter who was lost to an off-reservation adoption stands ambiguously on the boundary between fiction and non-fiction. Although it is written in the third person and shows no conspicuous evidence of a connection to Fletcher’s life, his introduction tells us that “every American Indian person – repeat, every American Indian person – is related to or knows someone or is someone who has been adopted out of or removed from

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8 Elizabeth Schneider, Student Stories, 76 UMKC L. Rev. 839 (2008).
9 Paul Secunda, Mediating the Special Education Front Lines in Mississippi, 76 UMKC L. Rev. 823 (2008).
14 Matthew Fletcher, Truck Stop, 76 UMKC L. Rev 843 (2008).
their reservation family."15 Olivas' story, unambiguously his own, bears another kind of relation to the fictional work in this issue. Like Chase's metafictional narrative, it reflects the postmodern moment that has infused legal scholarship in more recent years: it is intriguingly plural in the perspective it offers and in its engagements with the law. Olivas' narrative has several goals: it takes stock of the author's varied, productive academic life, from the perspective of mid-career; it traces the complex currents of Latino identity and history through the lives of two men who found a basis for resistance in law and learning; and it challenges a conservative political-legal frame that would deny the present purchase of that rich, intellectual tradition. Unlike many early narratives, which offered a singular perspective, this narrative follows the work of Patricia Williams in reflecting ambivalence in perception and judgment, as well as change over time.16 Yet, if the earlier portions of the narrative show how a life in the law may shape the complex strands of personal identity, the final portion of the essay—an experience-based critique of Samuel Huntington's work on immigration—demonstrates the capacity of identity to challenge the law. Amidst the contingency of perception and experience, within the capacity of the law to grow and change, one finds instances of retrenchment that warrant a more unitary response. These instances demonstrate that the struggle for equality, of which narratives such as Olivas' form a part, is never a forward march—there are always moments of progress coupled with struggles against forces of reaction.

The ambivalent status of contemporary movements for equality is most clearly documented by the contribution of Devon Carbado and Rachel Moran.17 This essay, an introduction to their forthcoming edited volume of Race Stories,18 illustrates the trajectory of narrative as a scholarly form. The fact that collections of "stories" detailing the human dramas behind familiar appellate cases are being published and assigned in courses from torts to tax demonstrates increasingly wide assent to many contributions of the genre. Yet, Carbado and Moran do not rest exclusively on this recent history; their analysis also details those attributes that have enabled narrative to achieve its purchase. The authors highlight the ability to illuminate the complexity of factual context and of racialized identities through narrative. They cite its parallels (evident, but often unacknowledged) to the explicitly perspectival "storytelling" that comprises a trial, and to the more implicitly perspectival narrative that marks a judicial opinion.

Yet, this essay takes no victory lap on behalf of historical or experiential narrative. As Carbado and Moran's essay—and their stories—poignantly demonstrate, the law has often resisted the complexity offered through the vehicle of narrative. Race Stories finds this shortcoming even in Justice Marshall, often lauded for his grasp of context. His failure to look beyond the boundaries of Richmond in his much-lauded dissent in City of Richmond v.
Croson left untold the story of the white flight that “both created the city’s black majority and caused the city’s economy to quickly decline.” But resistance more often arises when narrative complexity subverts entrenched understandings about race and identity. The authors make this point through the example of Takao Ozawa, the Asian-American plaintiff in Ozawa v. United States who was compelled by the pre-existing doctrine to classify himself as black or white. The Court was able to hear his pragmatic self-characterization as white, but rejected his more provocative argument that “there is not an absolutely white person existing on this earth.” Such insights may unsettle readers who wish to celebrate the triumphs of narrative, or who expect a simple, anecdotal trip behind the “faces and masks of the law.” However, this essay offers a forceful reminder that we must not be lulled by partial acceptance of narratives into a premature belief that their work has been done.

In their variety and experimentation, these essays do more than evoke narrative’s past and sample its present; they also glimpse its path(s) into the future. In particular, they reflect two patterns that create challenges for the continued efficacy of legal narrative. On the one hand, the growing ubiquity of storytelling in legal academia threatens to blunt its critical edge. Carbado and Moran glimpse this danger, seizing the opportunity presented by Race Stories to initiate the construction of a race cannon, enumerating its deeply critical themes and charting the successes and failures of litigants’ stories to produce political and legal movement. But not all of those who offer stories or story collections have been so self-conscious. The risk is that students who come of age amidst a plethora of Law Stories may come to view narratives as anecdotes—pleasing backstories about plaintiffs to be consumed before the law goes about doing its usual business. Stories offered in this vein may increase our appreciation for the humanity of the parties or the stakes of an opinion we have come to know primarily through its conceptual abstractions. They do not, however, help us think about what aspects of those stories offered by parties the law is or is not equipped to hear, and why.

On the other hand, the trajectory of narrative as an increasingly improvisatory, quasi-literary form carries its own hazards. If legal actors have been baffled by the rich contextuality of current narratives, how are they likely to respond as narratives become more complex, ambivalent, and meta-fictional? What forms of education—what accompanying elaboration—would equip legal decision-makers to grasp the multifaceted insights conveyed by a story such as Anthony Chase’s? In both cases, it seems that narrative should be coupled with the difficult work of methodological, epistemological, and political critique—work that was central to the inauguration of legal storytelling two decades ago.

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20 See Carbado & Moran, supra note 17, at 855 (citing an essay by Reginald Oh and Thomas Ross).
21 260 U.S. 178 (1922).
22 See Carbado & Moran, supra note 17, at 867 (discussing an essay on Ozawa by Devon Carbado).
and remains crucial to its continued impact. We need to understand how the
categorical character of legal analysis confounds complexity; how—if at all—the
law might become more responsive to a multilayered, contingent understanding
of identities. We need to ask what helps legal decision-makers hear and respond
to stories, and why some stories enter the legal lexicon more readily than others.
These kinds of questions will help storytellers keep their narratives vital, and
help legal actors grasp the insights they contain. They will remind us to make
narratives useful, even as we enjoy the abundant satisfactions they provide.