

IMPORTANCE OF STORYTELLING IN LEGAL EDUCATION AND PROFESSION: AN ANALYSIS

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ABSTRACT

Storytelling is one of the important skill in imparting legal education as well as in practice of legal profession. It helps students to inculcate better communication and analytical skills. Lawyers too, depend on a story told by their clients. Success of a law suit, by and large depends on how the story is constructed and what legal provision is applied, evidences adduced in support of such story. This also underlines the importance of listening skill of a law school students and lawyers.

However, it has not been paid adequate heed by the legal fraternity and its importance has remained neglected. This research paper is an attempt to analyse the theory of narration/ storytelling in legal education, its importance in developing a skillful lawyer and in practice of legal profession. The paper also contains brief overview of legal storytelling in digital world.

Keywords

Storytelling, Narration, Law school, Lawyer, Legal skill

Storytelling

Stories help in simplifying the knowledge and information sharing. It helps in building the communication and rapport between storyteller and listener. It simplifies the understanding of complex theoretical concepts. Hence, the use of storytelling plays a vital role in any educational system.

Stories are one of the primary ways that humans understand situations. People remember events in story form. Stories illuminate diverse perspectives; they evoke empathic understanding; and their vivid details engage people in ways that sterile legal arguments do not.ⁱ

History of Storytelling in Legal Theory and Practice

Storytelling is an essential method of legal practice, teaching, and thought. In the days of the classical Greek orators who were lawyers, telling stories was a primary technique for practicing law.ⁱⁱ This was also the original way cultures and laws were passed from one generation to the next; it was the most primitive form of law-giving.

When feminist and critical race theorists began to tell stories of discrimination to demonstrate the effects of particularly oppressive legal rules, traditionalists responded that stories had no place in law school or legal theory and should not factor into legal decisions.ⁱⁱⁱ Critical theories responded that legal decisions really were stories—but they were simply ones that told a dominant narrative.^{iv}

In the 1980s critical theorists in the legal academy began to tell counter stories to question and resist the traditional canon. Stories thus became not just the dominant discourse, but also a tool of liberation.^v

Some used fiction as an approach to critique doctrine;^{vi} others told the stories of factual events, often from the perspective of outsiders to law and the legal academy.^{vii}

Applied legal story telling

Applied legal story telling is a branch of legal fraternity that studies and analyses role and importance of storytelling and narration^{viii} in law school and legal practice. Storytelling is the backbone of all-important theory of the case, which is the essence of all good lawyering^{ix} and suggests that Applied Legal Storytelling also promotes the incorporation of storytelling into the pedagogy of lawyering skills.^x In words of Robbins, "You don't hire a lawyer to just craft syllogisms. Clients want their story told to court in order to get justice. It's all part of how a lawyer can work through the client's problems and understand what that client is looking for."^{xi} For example, a lawyer who is simply drafting a will, while likely to rely on a fair amount of boilerplate, will need to ask the client what her story is, whether she has children, whether she anticipates dying soon,

whether she is providing for a current spouse or other significant personages, whether she owns property jointly with someone, whether she wants to set up a trust or let her offspring inherit a lump sum.^{xii} Lawyers, of course, also use stories to persuade — clients to sign on, opponents to settle, judges and jurors to vote in their favor. If pitching a prospective client, you might be thinking in terms of an ‘elevator speech’^{xiii} — what you can say quickly to grab attention, to inspire confidence in you, to impress, to get someone to buy your services.^{xiv}

In, *Atkins v. Virginia*,^{xv} the U.S. Supreme Court ruled execution of mentally disabled defendants unconstitutional. The petitioner's successful brief employed competing testimonial narratives taken from trial transcripts and pieced together artistically, like bricolage, from shifting first-person perspectives.

In words of Dana Cole a law professor, lawyers “learn to decontextualize facts and categorize them according to their legal significance, sorting the relevant facts by issue,” and not in order to recount the complete, uninterrupted truth.^{xvi} In many cases, Cole asserts that: “the problem with storytelling is that [lawyers] simply do not know the story.” Cole believes the most critical piece of courtroom procedure is to communicate stories effectively and passionately, although he goes on to say that at no point is the truth a part of these stories.^{xvii}

Even though law is allegedly about something other than stories, i.e. “logic” and “reasoning,” stories nevertheless are there to guide the logic and reasoning.^{xviii} Ergo, it is misguided for lawyers to be suspicious of stories as applied in law or to try and mitigate their persuasive influence.^{xix} Stories or narratives are cognitive instruments and also means of argumentation in and of themselves.^{xx} Applied legal storytelling helps lawyers to communicate with their clients in understanding their case and conveying the possible legal solution and the future possibilities of litigation in their case. Storytelling has now become an essential lawyering skill for budding lawyers as it is an effective tool of simplifying the complex laws and their application in resolving the disputes of their clients. This underlines the need of inculcating storytelling in legal curriculum. However, unfortunately storytelling has been an alien phenomenon for the legal curriculum of modern Law schools.

Legal education and Storytelling

The legal education is process of teaching and learning having two basic approaches namely, Theoretical approach focusing on knowledge sharing and practical approach focusing on inculcating and building lawyering skills.

In Anglo-American countries, the teaching approach applied is based on practice, and on assignment of specific tasks to groups of students, pointing out resources analysis, and resolution of cases. Most of such schools resort to specific teaching methods like Casebooks based on true or fictional stories; Legal Clinics i.e. real hands-on legal experiences where students are called to offer pro bono legal services to real clients under the guidance of experienced teachers; Moot Courts i.e. simulation of a real appeal and competition with others, whose value is amplified by the use of information and communication technologies.^{xxi}

Between the 1980s and 1990s, several professors from important law schools and also legal scholars, tried to emphasize and promote the introduction of Storytelling as an alternative teaching method or as an addition to traditional techniques used to teach legal topics. This second phase was launched by studies like “The Legal Imagination: Studies in the nature of the Legal Thought and Expression.”^{xxii}

In the period 2007-2009, the literature presented a view of the applied strategy of storytelling in the legal environment and “to weave the law in the stories” seemed to become the best way to preserve concepts and think about possible applications.^{xxiii} Five techniques to integrate storytelling with traditional legal education were defined as follows:

- a. Metaphorical Stories (i.e. stories told to explain complex concepts),
- b. War Stories (i.e. stories told to explain a legal rule or doctrine after the students labour through analysis of rule and its application),
- c. Case Stories (i.e. stories describing legal cases),
- d. Storytelling through literature (i.e. lifelike characters and stories from literature taken as a model),
- e. Sharing stories (i.e. individuals that integrate and build together their own stories expanding them routes and viewpoint).

Storytelling in Digital Era

With advent of technology, digital storytelling has been a recent phenomenon in the modern legal education. Though the story, by and large has remained same in form, the telling has changed a lot in digital world. Theoretical foundations support the effectiveness of digital storytelling in education. Scientists have determined incorporating narratives into learning is effective because our brains search neural networks for similar items.^{xxiv} Many studies have examined the effects of digital

storytelling in developing diverse skills across various learning disciplines. Students have created stories to gain skills and participate in the learning process.^{xxv} This format has been used to connect students with lessons in history, language arts, teacher education, journalism, mathematics, law and science.^{xxvi} In addition, studies demonstrate that digital stories helped struggling readers understand text and meaning better,^{xxvii} as well as offering the ability to connect “marginalized communities” with learning materials, by overcoming literacy barriers.^{xxviii}

Freely available and accessible videos on internet from all across the subject areas, have made storytelling a lot easy and interesting. Similarly, digital gaming too has proposed a revolution in field of storytelling before the modern world. Alonso, Molina, and Poro (2013) reviewed 30 multimodal digital narratives and discovered the combination of pictures, music, and narration found in digital storytelling helped convey “highly complex mental images.”^{xxix} For example, *CivilObiezion!* is a series of computer gaming trial simulations in which students play the role of lawyers. The players are invited to evaluate questions posed to a witness in the course of a hearing and to decide whether it is possible to oppose according to the Federal Rules of Evidence. The student must choose when to oppose and select an explanation for the objection made. Acceptance or rejection of the objection are decided by computer that plays the role of judge.^{xxx}

An example of digital advancement in legal education can be found in Transactional Learning Environment (TLE). TLE (Transactional Learning Environment), developed in 2000 by Glasgow Graduate School of Law (GGSL) and UK Centre for Legal Education, is a virtual simulation environment used in a professional legal practice training course. TLE is built around an on-line virtual town containing utilities, businesses, agencies and government organizations etc. which provide the backdrop for students to progress simulated legal transactions.^{xxxi}

Fishbowl Online Role-Play is an educational game based on problem solving for the development of legal skills. The game provides students with opportunities to practice legal skills by taking different roles that allow them to practice interviews to witnesses, legal advice and moments of judicial negotiation and enjoy instructional scaffolding moments that promote the construction of knowledge in action.^{xxxii}

Conclusions

Stories are the most pervasive mode of day to day communication. Storytelling is an integral part of legal education and profession. A successful lawyer is one who collects scattered set of facts from clients and develops a persuasive story. A criminal justice system is in particular depends a lot on story presented and argued upon by a lawyer. Every litigation is a journey of story from client to lawyer, from lawyer to a judge and from judge to a society at large through a judgement of a court. A success of a client depends completely upon a fact as to how well a story of a client is supported by the evidences and how it is presented before a court by a lawyer. Hence, storytelling is an important legal skill that plays a crucial role in justice delivery system.

Experiences of senior lawyers is also a story of them which helps budding lawyers to improve and develop their sense of storytelling. Doctrinal education and practical skills needs to go hand in hand. Storytelling is one such practical skill that has been neglected in law schools curriculum and needs a serious look after in order to build skilled lawyers of future.

ⁱ Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 Mich. L. Rev. 2099, 2104 (1988)

ⁱⁱ See M. Fabius Quintilianus, *The Institution Oratoria of Quintilian* (H.E. Butler trans., Harv. U. Press 1966)

ⁱⁱⁱ Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 Stan. L. Rev. 807 (1993)

^{iv} Richard Delgado, *The Rodrigo Chronicles: Conversations about American and Race* 194–195 (N.Y.U. Press 1995)

^v John Braithwaite, *Narrative and “Compulsory Compassion,”* 31 L. & Soc. Inquiry 425, 428 (2006).

^{vi} Robert L. Hayman, Jr. & Nancy Levit, *the Tales of White Folk: Doctrine, Narrative and the Reconstruction of Racial Reality*, 84 Cal. L. Rev. 377, (1996) at 398.

^{vii} Patricia J. Williams, *the Alchemy of Race and Rights* (Harv. U. Press 1991)

^{viii} The term “narrative” in modern discourse is a broader word that can encompass abstract entities such as the basis for analogizing factual scenarios in some forms of legal reasoning, whereas “stories” generally refer to specific people and events, see, Peter Goodrich, *Narrative as Argument* and David Herman, *Narrative as Cognitive Instrument*, in *Routledge Encyclopaedia of Narrative Theory* 344-345 (David Herman et al. eds., Routledge Taylor & Francis Group 2005). Narrative Pedagogy has an increasing importance. Effectively utilized in several disciplinary contexts and domains, it guarantees, even within the legal framework, a high degree of learner’s involvement and of skills development, see, Blissenden, M., 2007. *Legal Education today: teaching to actively engage law students – new approaches to the use of decided cases.* Proceedings of the 62nd Australasian Law Teachers Conference.

^{ix} Ruth Anne Robbins, *An Introduction to Applied Legal Storytelling and to This Symposium*, at pg. 3 LEGAL WRITING 3 (2008)

^x Id, at 12

- ^{xi} Id
- ^{xii} Lory Tripoli, *What is legal storytelling? Using Drama, Plot, Character to Win Cases, Learn the Law and Satisfy clients*, (2018) <https://www.thebalancesmb.com/what-is-legal-storytelling-4098154>
- ^{xiii} An elevator speech is a clear, brief message, a “commercial” about you. It conveys who you are, what you’re looking for and how you can benefit a company, organization or prospective client.
- ^{xiv} Id
- ^{xv} 536 U.S. 304 (2002)
- ^{xvi} Cole, Dana K., *Psychodrama and the Training of Trial Lawyers: Finding the Story*, (2001). Northern Illinois University Law Review.
- ^{xvii} Id
- ^{xviii} Jerome Bruner, *Making Stories: Law, Literature, Life*, ch. 2 (Farrar, Strauss & Giroux 2002).
- ^{xix} Id
- ^{xx} Peter Goodrich, *Narrative as Argument and David Herman, Narrative as Cognitive Instrument*, Routledge Encyclopedia of Narrative Theory 348-350 (David Herman et al. eds., Routledge Taylor & Francis Group 2005)
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