

## The Stories We Tell

*Seduced by Story: The Use and Abuse of Narrative*

Peter Brooks (New York Review Books 2022), 173 pages

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I have long believed that legal education should demand that students do more reading. Or perhaps “more” is the wrong word, as there already is a mountain of it. Perhaps what I mean is a different *kind* of reading. Hundreds of pages of case excerpts, as currently assigned, do little to orient students to the greater context of law practice broadly, or the personal stories that underlie those cases individually. But add in other kinds of reading—narrative nonfiction, literary fiction—and a new world opens. Students can immerse themselves in “lives, struggles and fights against oppression,”<sup>1</sup> reigniting the passion that brought them to law school in the first place or finding a new purpose as they build their careers. Through reading, students can enter the life and mind of a fictitious character and increase their own capacity to understand the thoughts and feelings of others,<sup>2</sup> thus building an empathy muscle sorely needed in legal practice.<sup>3</sup>

Most importantly, the practice of law is already saturated with stories. We write Constitutions, codify laws, and enact statutes. But when it comes time to interpret any of them, we look to *stories* about real people, who did real things, with real consequences—that is, case law. While law students indeed read a great deal of case law, they generally read it as a vehicle for learning legal doctrine. The more and sooner law students engage with

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<sup>1</sup> Claire Cain Miller, *How To Be More Empathetic*, N.Y. TIMES (Jan. 31, 2019), <https://www.nytimes.com/guides/year-of-living-better/how-to-be-more-empathetic>.

<sup>2</sup> *Id.*

<sup>3</sup> Susan Greene, *Mindful Practices for Law Practices*, 46 OHIO N.U. L. REV. 53, 63–66 (2019); Jane Smiley, Opinion, *Fiction is an Exercise in Empathy*, N.Y. TIMES (Aug. 27, 2015), <https://www.nytimes.com/roomfordebate/2012/06/06/is-fiction-changing-for-better-or-worse/fiction-is-an-exercise-in-empathy> (“Reading fiction is and always was [a] practice in empathy – learning to see the world through often quite alien perspectives, learning to understand how other people’s points of view reflect their experiences.”).

narrative storytelling, I believe, the better prepared lawyers they will be and the greater context they will gain for those cases they read.

And so, I was naturally delighted to come across literary critic and Yale professor Peter Brooks's new book, *Seduced by Story: The Use and Abuse of Narrative*.<sup>4</sup> In it, Brooks quickly confirmed my suspicion that stories have invaded every facet of human existence, from the back of a package of cookies he just bought,<sup>5</sup> to *The New York Times* reporting on the economy,<sup>6</sup> to President George W. Bush's presentation of his cabinet.<sup>7</sup> A story, Brooks explains, has no inherent quality of good or bad. Rather, it has power. And "for that reason it demands a powerful critical response."<sup>8</sup> We must "celebrate the human capacity to imagine, to create other worlds," but we must still retain our "skeptical capacities," because "[s]tories are tricky, and often designed to be so."<sup>9</sup>

In his central quest to equip us to be critical recipients of the stories that surround us and to minimize the risk that we conflate "what happened" with "the telling of what happened,"<sup>10</sup> Brooks devotes much of his book to explaining how stories work. This was enlightening to me on a few levels. For one, I learned the word "epistemology," which Brooks defines as how "those who recount stories know what they are talking about."<sup>11</sup> (He admits it sounds pretentious, but nevertheless, I plan to use it liberally henceforth.) Relatedly, he explores why some narrations are unsatisfying, Paula Hawkins' *The Girl on the Train* being a particular target of Brooks's ire for its narrator's impossible description of her own death.<sup>12</sup> Brooks makes much of the relationship between narrator and reader, and the reader's dependence on a narrator to act fairly. The relationship is ultimately a question of control—*who controls the narrative?* Brooks's discussion is rewarding for readers familiar with the books upon which he focuses, for he delves deeply into the literary techniques those authors employed. The discussion is surely less rewarding for readers unfamiliar with the literary examples upon which Brooks draws.

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<sup>4</sup> PETER BROOKS, *SEDUCED BY STORY: THE USE AND ABUSE OF NARRATIVE* (2022).

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 7 (stating that we "need a better story about the drivers of economic growth").

<sup>7</sup> In which Bush proudly stated that the appointees have "their own story that is so unique, stories that really explain what America can and should be about." *Id.* at 3.

<sup>8</sup> *Id.* at 120.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 14.

<sup>11</sup> *Id.* at 27.

<sup>12</sup> Here I must admit that I recall reading *The Girl on the Train* while lounging by a pool several summers ago and not minding that suspension of logic in the least. In fact, I quite enjoyed the book.

Of particular interest to me, Brooks concludes his book with a discussion of storytelling in the law. In this realm, because “story is so forceful, the law needs to police and cabin its uses,” says Brooks.<sup>13</sup> First, he makes the well-established point that stories saturate a case from the very beginning of an investigation<sup>14</sup> to a court’s final judgment.<sup>15</sup> But he makes a more compelling, novel argument in his discussion of our legal system’s “unabated reverence for and obedience to” the narrative of the Constitution and the story of our founding principles, even when such reverence is “counterintuitive and socially unproductive.”<sup>16</sup> That reverence is particularly strange, says Brooks, for a country that prides itself on being so “resolutely turned to the future.”<sup>17</sup> And yet, argues Brooks, all constitutional interpretation relies on the premise that the story began in the 1700s and that modern legal decisions are merely new points in a plot line that plods through American History. In this way, there is no new law; rather, there is just an ongoing story. Here, again, Brooks reiterates his ultimate point that we must be aware of stories and critical of them. “If the Constitution is our myth of origins,” he says, “we must expect it to generate mythic narrative consequences. But it should no doubt be subjected to a more acute awareness of its narrative logic.”<sup>18</sup>

Brooks’s writing is clear and effective. He develops his arguments methodically but organically, and I found space while reading this book to reconsider stories that have been impactful in my own life. There are, however, two criticisms I might levy. First, Brooks dives into thorny questions without first establishing parameters. What exactly *is* a story? Brooks tells us what it is not—it is not a lyric, he says—but he does not quite define it. Brooks focuses primarily on narrative fiction and a bit on American legal history, both of which are workable vehicles for his argument, but they are mere slivers of how one might define a story. Second, he gives relatively short shrift to the already rich literature on legal storytelling and its ethics.<sup>19</sup> The reader would benefit from a deeper

13 *Id.* at 129.

14 “[E]ven when police apply for a search warrant they tell a story of how and where they will search, and what they think they will find.” *Id.* at 132.

15 Brooks points to various opinions by Justice Cardozo to establish that a persuasively set forth factual narrative nearly obviates the need for a legal explanation. *Id.* at 127.

16 *Id.* at 136–37.

17 *Id.* at 137.

18 *Id.* at 150.

19 See, e.g., Lori D. Johnson & Melissa Love Koenig, *Walk the Line: Aristotle and the Ethics of Narrative*, 20 NEV. L. J. 1037 (2020); Jeanne M. Kaiser, *When the Truth and the Story Collide: What Legal Writers Can Learn from the Experience of Non-Fiction Writers About the Limits of Legal Storytelling*, 16 LEGAL WRITING 163 (2010); Victoria Ajayi, *Violence Against Women: The Ethics of Incorporating the Cultural Defense in Legal Narrative*, 25 GEO. J. LEGAL ETHICS 401 (2012); Steven Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ALWD 63 (2010); Helena Whalen-Bridge, *Persuasive Legal Narrative: Articulating Ethical Standards*, 21 LEG. ETHICS 136 (2018).

engagement with that literature in this book to provide a more well-rounded presentation of the thorny issues that arise when storytelling and the law intermingle.

Despite minor shortcomings, I thoroughly enjoyed my time with *Seduced by Story* and Brooks's compelling argument that we must be critical and attentive listeners to the stories around us. It has solidified my belief that a well-rounded legal education should introduce greater variations in assigned reading and even inspired me to make a suggested reading list for my students.