On the Emergence of Narrative Jurisprudence: The Humanistic Perspective Finds a New Path

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I am working in a library at Murray State University in Murray, Kentucky, a small, out-of-the way place in Western Kentucky very near where I grew up. I walk through the periodical section Z to P, O to F, working backwards, gathering an armload of journals. It would take days to read everything I have pulled from the shelves, a task which will, in light of other interests, go undone. Before leaving these journals to the next reader I persue them for a well-crafted essay, for new ideas. As I read, I see in the mirror of words and ideas fresh possibilities for my own work. I see scholarly work in a variety of self proclaimed disciplines, that intrigues and provokes--work that I admire but will never do.

I am intrigued by the number of articles on Marxism, Feminism, the professions, the present condition of the social sciences and the humanities, morality and ethics, and the burgeoning literature on narrative.[1] I read the articles on narrative, make some notes, searching for ways to revision professionalism, and describe this new field I call Narrative Jurisprudence.

I am happy to read another well-written article whatever the

[1] See e.g., Frances Ferrarotti, Biography and the Social Sciences, 50 (1) Social Research 57-80 (Spring 1983); Hayden White, The Question of Narrative in Comtemporary Historical Theory, 23 (1) History and Theory 1-33 (1984); Daniel Bell, The Turn to Interpretation: An Introduction, 51 (2) Partisan Review 215 (1984).

HeinOnline -- 9 Legal Stud. F. 123 1985

field of scholarship. The difficulty of finding a beautifully crafted essay, or a comprehensive and thoughtful overview of some scholarly field, much less writing such a work ourselves, is no small pleasure. It is difficult to write even a modest article, that will be worthwhile or offer an explanation that brings order to confusion. Some may find teaching as an easy life, a life where small pleasures suffice. I do not mean to suggest by my references to pleasure that I share that view. I use pleasure in the sense that Socrates must have taken pleasure in the life of the agora in Athens, a life and way of teaching that lead to his death.

If the scholar is to be adventurous, perhaps heroic, and her scholarship creative and invigorating, then we will need new metaphors and images for what we do, how we think and speak and write. We will need a new sense of ourselves as teachers and writers, as thinkers and speakers. To teach and live a life content with small pleasures, we ask too little of ourselves.

In the autobiographies of early "social scientists" there is a sense of purpose and meaning in being a part of the discipline, in standing for the kind of knowing represented by the discipline and the varies that a life in the discipline signifies to others. Some believe that what was true then is likewise true today. The ranks of Ph.D.'s in the social sciences swell; the lines waiting for the few available teaching positions in our colleges grow longer. But are things unchanged? The traditional liberal arts and social sciences disciplines have failed in their promise. We are a new generation of disaffected scholars.[2]

Even the disaffected are contaminated by outbursts of optimism. We watch the renewed concern and commitment to liberal arts teaching, the evolution of the values and moral education movement, the resurgence of interest in ethics, and the steady proliferation of humanistic and progressive influences in professional education. We hear talk of the revival of the liberal arts, humanistic and

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[2] Walter Kaufmann, a philosopher who makes philosophy accessible to those outside the hallowed halls of academic philosophy, argues that

> those whose self-consciousness and sensitivity are most fully developed are bound to be most deeply troubled by the world, society, their fellow men, and their own shortcomings. Where those who shut their eyes and lull their minds to sleep, as well as those reduced to brutishness in one way or another, find it possible to feel at home, the autonomous spirit who insists on keeping his eyes open to examine critically his own position and alternatives finds it impossible to feel at home.

Walter Kaufmann, Without Guilt and Justice 147 (1973).

HeinOnline -- 9 Legal Stud. F. 124 1985

interdisciplinary studies programs. But in our disaffection we find little revival of the sense of purpose and meaning once found in the disciplines and among professionals. Our disciplines have failed us.

While writing about disciplines I had the following dream.

> I am at home working on my house which is a large rambling Victorian located on a hill. A large part of the house is built out over a steep hillside. My father and I are working in the attic doing repairs. I notice that the central part of the house seems to be pulling away from the large enclosed porch section (which contains sleeping rooms) that extends from the main part of the house out over the hill. The porch is an elongated wide tunnel like structure, enclosed in something like plexiglass.
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> As we work in the attic I notice that the porch section has pulled away from the main structure. During the course of our work I see that the problem is getting worse and say something to my father about the problem. But before I can speak to him, I realize that the porch is going to fall off. The lattice-like framework that supports the porch begins to give way and the porch begins to crumple. I move away from the house and turn back to watch in amazement as the rest of the house caves in.
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> Neighbors appear to watch the house fall. It seems to be happening in slow motion. I hear one couple talking about how it would not have happened if I had shored up the foundation after the spring rains. I hear someone say, "Everyone around here shores up the house in the late spring. It has been very rainy this year."
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> The entire house is now collapsing. It is not clear whether any of it will remain standing. My father drives up in a truck. He tells me he is driving around to the end of the house where the porch was attached to see what he can do. I tell him it is too late and that he can't stop the destruction now. He grins at me and says: "Well, I can go on over and take a look and pick up my tools. Maybe I'll be able to do something while I am there."

Disciplines are nothing more than porches attached to some larger structure. The porches are threatened, disciplines are crumbling. At times it appears that the entire house may be collapsing.

For some social scientists and humanists the failure is devastating. They pursue traditional research, searching for ever more elusive scientific techniques, blind to the values supported by their work and those of colleages within the discipline with whom

HeinOnline -- 9 Legal Stud. F. 125 1985

they ally themselves. John William Miller, a philosopher, has written that

> the organized modes of knowledge exert a compulsion that disregards subjective interest. They represent no accident, no caprice or private preference, but rather the various loci of a reality that breaks in upon all men. Even if one is no economist one feels that somebody has to be.[3]

It is not necessary to agree with Miller's view that fields of knowledge represent a reality beyond the subjective interest, preferences, caprices and accidents of the individuals who practice the discipline to share his feeling that our disciplines do seem to have a life of their own. One form that this "reality that breaks in upon all men" takes is the devotion of men and women who commit their lives to the pursuit of knowledge within the limited, bound world of a discipline. For those who devote their academic and professional lives to the core tenents of the discipline, to the demands of the ideology of professionalism, the failure of the social sciences is devasting, paradoxically, not because they sense the fundamental incoherence and irrationality of the underlying ideology, but rather because they are blind to it.

In the effort to "make it" in the discipline, to be a part of a professional group, the scholar denies what those on the periphery see and understand so clearly--that scientific methodology can never replace human sensitivity and caring. The failure of the social sciences is now compounded by the self-deception of those at the core of the discipline and the persistent battle that they wage against those at the periphery and those who have gone underground.

To live by or within a discipline and to make its demands our own is a form of acceptance, submission, resignation. More signficantly it requires massive denial. It denies the social ends served in traditional applications of the disciplines. It denies the fundamental integrity, dignity, and spirit of those it makes the subject of study. It denies the essential livelihood and personhood of the practitioner of the discipline.

We have been educated, perhaps trained is a better word, in the belief that disciplines can be practiced and professions embraced without reflecting on how they promote a limited set of values.

Our disciplines give us much to do, a way to talk, a way to earn a living, membership in a group of like-minded folks to talk with during the day, a pleasant way to get through life. Can they be and more than that?

In the past two decades there has been a substantial body of literature and scholarship generated in virtually every field of

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[3] John William Miller, The Philosophy of History 14 (1981).

HeinOnline -- 9 Legal Stud. F. 126 1985

knowledge, in every major discipline, and in the professions, which calls the preoccupations and methodologies, and more significanty, the fundamental values of the disciplines and professions into question. There are several trends in this on-going critique of the social sciences and the professions that deserve attention.

Science has become not only a methodology but a mode of understanding not only the material and physical world, but a world view which presents itself as the sole means for understanding and defining the very nature of reality. When science claims for itself a position as dominant reality and creates a context in which all other realities must be tested and judged it becomes an ideology--it makes itself into scientism. It seeks to become master of all forms of knowledge and modes of understanding.

There are frequent efforts, within and without the scientific community, to show how science oversold itself and promised too much.[4] Daniel Bell in introducing a series of essays in the *Partisan Review* notes that "there are those who argue that the natural sciences themselves have lost their 'privileged' status as being the mode of inquiry for 'objective' truth and are becoming more like all the other modes of human inquiry. . . ."[5]

As science claims more in the way of understanding and meaning than it can deliver we begin to experience science as scientism. There is something fundamentally dissatisfying in the analytical positivist bent of mainstream academic discourse. We fight over methodology and flaws in empirical design losing sight of the need for insight and understanding; we design rigorous studies and learn to our dismay that they help us describe so small a part of the world that they are essentially worthless; we devise rich descriptive theories and find that they tell us too little about the reality of everyday life.

Science transforms not only our understanding of the natural world, but our place in the world, our sentiments and values, the kind of story we find to possible to tell and live. By substituting science for religion, technology for theology, knowledge for understanding,

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[4] James White notes that

> The region that can be ruled by the methods of logic and science, and by the parts of the mind that function in these ways, is after all, rather small; and, for good or ill, much the larger part of human life must proceed without the certainties these two forms of reasoning provide.

James Boyd White, When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community 22 (1984).

[5] Bell, supra note 1.

HeinOnline -- 9 Legal Stud. F. 127 1985

the rational for the mystical, we lose the awareness and insight which comes from mystery, awe, and wonder which are fundamental to the rhythm of everyday life.

The making of the disciplines into "sciences," the need for formal education, the long (and sometimes arduous years of training) turn disciplines into monastery-like fortresses ruled by monks. We are told how and when we can enter, under what circumstances, and when the initiate will be certified as a master. We are told that if we do not learn the language, methodology, and special body of substantive knowledge then we cannot enter the kingdom.

Traditional conceptions of our disciplines as social sciences make possible one kind of knowing while they distance us from our own experiences, and from the everyday world, where our lives are lived. Wendell Berry, a Kentucky farmer, poet, essayist, and novelist has written often of our "general cultural disorder." Berry argues that the condition derives

> from the specialization and abstraction of intellect, separating it from responsibility and humility, magnanimity and devotion, and thus giving it an importance that, in the order of things and in its nature, it does not and cannot have. The specialized intellectual assumes, in other words, that intelligence is all in the mind."[6]
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> [S]pecialization has tended to draw the specialist toward the discipline that will lead to the discovery of new facts or processes within a narrowly defined area, and it has tended to lead him away from or distract him from those disciplines by which he might consider the *effects* of his discovery upon human society or upon the world.[7]

To treat a discipline as if it were a science suggests that there is something to be learned, a way of understanding, seeing, and speaking, that is necessary to comprehend the world, a way of comprehending and understanding that can be obtained only through formal training.

One might imagine each discipline and profession as being a circle, containing a hard, dense, mass core. The core is the scientific, objective, analytical, methodological aspects of the discipline which promote the discipline as a "social science." At the center of each discipline is a phantasy of science--objectivity, measurability,

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[6] Wendell Berry, Standing by Words 57 (1983).

[7] Wendell Berry, Recollected Essays 1965-1980 159 (1981).

HeinOnline -- 9 Legal Stud. F. 128 1985

neutrality, detachment, verification.[8] In each of the "social sciences" there is a tradition which holds to and represents these scientific virtues, a tradition which thrives as the mainstream of every academic discipline and profession.

Just beyond this core, of masters and their followers (a group at one time interested in grand theory, and today more concerned about methodological rigor) there is a supporting cast of teachers and scholars who accept the core as reality. They can imagine no alternatives to tradition. The two groups together maintain the entrenchment of tradition against critcism. The "social sciences" have reached a plateau and are holding their own, but more by means of entrenched protections given to an existing classificatory scheme than to recurring and renewing of knowledge, understanding, awareness, and insight. Entrenchment protects the established core of a discipline in diverse (sometimes perverse) and complex ways.

The image of a discipline as a circle with a dense mass for a core looks far too much like the drawings of atoms in high school science books! We know that atoms do not exist in isolation but combine and recombine into increasingly more complex forms. Therein lies a warning for the image of the discipline as circle, with a nucleus of scientific methodology. We know now that even atoms can't be represented in this fashion!

Human understanding cannot be confined within a discipline, boxed in, penned up, secure against outside influence. Disciplines such as sociology and psychology are appropriated (taken, borrowed,

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[8] We think of science as providing explanations in terms of "findings." Science depends upon verification, which means that another good scientist must, using similar methods, be able to "find" the same thing.

> The outer, enveloping circle is labeled *objectivity*. No knowledge can claim to be scientific in any sense until it enters this domain, which is to say, until it elicits intersubjective agreement. . . . We move closer to the heart of science, however, when we enter the second circle, *prediction*. . . . A scientist who goes further and takes command. . .throwing switches in the tracks on which nature runs, so to speak, steps even closer to science's center, into the circle marked *control*. . . . The fourth guideline of science takes the form, not of another circle that hugs a center even more tightly, but of an arrow which, beginning at the outer rim, drives straight to the center itself. The name of this final guideline is *number*.

H. Smith, Forgotten Truth: The Primordial Tradition 1 (1976).

HeinOnline -- 9 Legal Stud. F. 129 1985

bought, or thieved) by those in other disciplines.[9] New modes of understanding and awareness exist next door, no discipline is autonomous. And perhaps more significantly, every discipline contains within its traditional practices and theories the possibility for transformation.

One might think of a discipline as a piece of property on which a grand building has been constructed. The construction has taken place on a piece of land whose ownership is contested, the surface has been undermined and the sub-strata long since honey-combed with abandoned mines. The rights to the air space above has been given away or auctioned off to the highest bidder.

Imagine then, psychology, as that grand structure, and the location is Houston, Texas, a city built in a naturally inhospitable place. The city of Houston--a city without zoning laws--provides an apt image for a map locating our contemporary disciplines. Churches, massage parlors, parking lots, high rise office buildings, residential apartments, and service stations share a neighborhood. Psychology and sociology, history and philosophy, are each in their own way like a church in an un-zoned city. Anything is possible. There is simply no way of knowing who will be living next door tomorrow.

Perhaps the city is too lowly a metaphor. Imagine our disciplines as countries. Some countries are more inviting than others. There are countries that thrive on tourists, others on corruption. Some invite the wandering traveler, others close their borders.

It may not be possible, without knowing the language, and without being a speaker of it, that I would ever feel at home in a foreign country. And at the same time I can envision traveling to a country like Greece, unwilling to be a mere tourist. There is an alternative. I can be a traveler who learns, humble enough to realize that others offer me as much as I offer them. I can admire Greek scholars and their command of the language without handing over Greek mythology to academic experts and classical scholars. It

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[9] The disciplines are sufficiently busy maintaining their boundaries from outsiders looking for a home, asylum, or a free meal, that there is little time to prepare psychology as an export. This means that when psychology arrives in a discipline it comes in because someone brings it in. (Maybe you "catch" psychology, or get "infected" by it and spread it around to your colleagues like a disease.) The psychology that is imported is psychology as studied by, read by, known by, believed in by, a particular person. Psychology is not an integrated, autonomous, body of knowledge that can be brought into another discipline as a whole. There is no psychology to export and consequently none to import. "In psychology as in logic, there are truths, but no truth." Albert Camus, The Myth of Sisyphus and Other Essays 15 (Vintage Books, 1952).

HeinOnline -- 9 Legal Stud. F. 130 1985

would be wonderful to know Greek, to read the Greek dramas and myths in the language in which they were written, to work out one's own translations, to speak Greek to the natives of that land.

I simply cannot know Greece as intimately or as throughly as one who knows the language, as might an anthropologist who lives and makes a life (albeit temporary) among Greek peasants. The anthropologist will need skills that I am unable to master. But there is a different way of being in Greece, or Bali, or in the Navajo Nation. To go to a place with humility, with the sense that I have come to learn means that I am a traveler, one who has a place in countries other than my own. Can we not be travelers in these diverse, strange, alien countries, these disciplines other than our own? To be told that I must have an academic degree in psychology or sociology or anthropolgy means that the kind of knowing, understanding, and awareness that comes from travel will be reserved for the elite, the monks who man the monastery.

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Each discipline comes into being as a response, as a need to understand, explore, *and* control human experience. A discipline preserves a strain of thought, a way of thinking about knowlege, a way of organizing knowledge. No discipline begins with a clean slate. A discipline reflects the trauma of its origin and the historical "shaping" of the discipline that has taken place within the university and within society.

A discipline is a reaction to what went on before, it is a reflection of human life. A discipline, as any child, has a parent, and comes into being within a family. But like our real families, they both protect and nuture; and they deny, abuse, and abandon.

One example of the kind of family connection that I have in mind is the "sister disciplines," psychology and sociology. Like most sisters they have tended to go their own way and the attempts to dress them alike, as in social psychology, has had only marginal success. But they are sisters in spirit, if it not in reality. A psychology without "sociological imagination" becomes ahistorical, apolitical, and amoral as well. A sociology without psychology loses it's grounding in the felt-experience of human sensibilities and meaning. "The work of sociology, then, is to confront the passionless world of science with the epiphany of family, of habit, and of human folly, outside of which there is no remedy."[10]

The image of disciplines as sisters conveys a sense of common parents and this may be misleading. I do not mean to suggest that sociology and psychology share a "founding father." It is not a

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[10] J. O'Neil, Making Sense Together: Introduction to Wild Sociology 10 (Harper Torchbook edition, 1974)

HeinOnline -- 9 Legal Stud. F. 131 1985

founding father, the begetting father that they share, but the more significant Father that stands as symbol for all attempts at human knowledge--Father as all-knower and authority. Science and positivism are ideologies of Father, of patriarchy. The "social sciences" (and the humanties that flirt with scientific methodologies) carry on in the name of the Father.

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A discipline is a response, a turning away from the past. The question is: What are we turning away from? To answer that question requires what John Bonsignore tells me is "another autopsy of the dead body." John's point is that we spend an inordinate amount of time and energy, saying again and again, what it is that we find wrong with the world, with society, with our disciplines and professions.[11] Yet, another autopsy of the body may reveal something that we need to know, or provide us with insight into what we have been and what we have become. For those who have the patience and the desire, socio-historical accounts of our disciplines and our professions can be revealing.[12]

Each movement, trend, perspective, and orientation within a discipline is a response, a move against (even as it is a move toward, a move forward). "Schools of thought" coalese around certain themes and values, around ways of writing and talking (forms of scholarship and it's communication). Movements and trends are generated, and have their origins in, concern, fear, hope, ideals and dreams. An intellectual movement "takes off" when fear is idealized and hope articulated. Consequently, a history of sociology, of anthropology, of psychology is as much about fear and hope, beliefs and ideals, as it is how the discipline evolved and found its place in the world. How do those who come to call themselves sociologists or psychologists think about their work and their lives within the discipline? What "anxiety of influence"[13] haunts sociologists? What does "anxiety" and the "influences" upon sociologists mean to sociology?

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[11] Every dead body deserves a proper burial. When we bury the body, it does not mean that we are putting the "person" away. Death does not end all. Memory insures that we cannot rid ourselves of those we have loved or hated, totally and completely. Likewise, there is little possibility that we will ever be free of the teachings of our fathers in the disciplines.

[12] A particularly striking example is Burton Bledstein's, The Culture of Professionalism (Norton edition, 1976).

[13] See H. Bloom, Anxiety of Influence: A Theory of Poetry (1973).

HeinOnline -- 9 Legal Stud. F. 132 1985

If a discipline is turning away from something, then it (and we) must be turning toward something.[14] What are we looking for? What is it that we are trying to find? Purposes once clear is obscured. Dreams and ideals are relinquished as unrealistic.[15]

The farmer does some turning, perhaps not quite so neurotic as our own. He turns the soil as a means of cultivation. It is true that farmers now plant crops without tilling, or turning the soil. Interesting--what we might learn from farmers. I can envision "no-till cropping" in psychology; a study of "erosion" of community in sociology and political science; the "planting and harvesting" of the intellect and human sentiment in the humanities; and interdisciplinary efforts to "cultivate" a rich harvest of knowledge.

The farmer can also tell us something about failure. In our disciplines we try to forget about failure. Yet, when we venture out, it is often necessary to turn back. All voyages cannot be completed. Equipment failures and unfavorable weather can require turning back. We turn back to our place of departure, forego our destination

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[14] Some, if not all of our turning is not turning toward, but just turning. Turning and turning. There is no time to settle down. No time to look ahead. We loot and then abandon our past, even as we rob ourselves of the future. What do we do now? A small glance to the right, and then to the left. Move a step forward. Then a few more. A turn to the right. A turn to the left. We get dizzy from all the turning. Some have already come full circle!

[15] We seem to be waiting. For a new President. For a new Chair of the department or a new Dean. Waiting till the kids grow up. Waiting until we get enough money to buy a new car, take a vacation, do some work on the house. The question is: What is worth waiting for? What kind of consciousness do we have of our waiting.

[16]Quests sometimes fail, are frustrated, abandoned or dissipated into distractions; and human lives may in all these ways also fail. But the only criteria for success or failure in a human life as a whole are the criteria of success or failure in a narrated or to-be-narrated quest. . . . It is in the course of the quest and only through encountering and coping with the various particular harms, dangers, temptations and distractions which provide any quest with its episodes and incidents that the goal of the quest is finally to be understood. A quest is always an education both as to the character of that which is sought and in self-knowledge.

Alasdair MacIntyre, After Virtue 203, 204 (1981).

HeinOnline -- 9 Legal Stud. F. 133 1985

until another day. It is no crime, sin, or measure of psychological inadequacy to turn back and slow down.[16]

Science, technology, capitalism and market economies, the family, even the idea of progress itself is now in doubt, and beliefs in the social institutions which support them are disintegrating. This nihilistic perspective can be found in virtually any issue of any but the most conservative scholarly journal. It is a time in which there is little appeal in constructing grand social theories and all-encompassing political philosophies. Nihilism makes belief in grand theory and philosophy problematic. Theory has lost its primacy in the world of knowledge and we turn for understanding to individual human lives. Out of this theoretical nihilism and mistrust of science as a world view comes more conserving forms of knowledge and politics; an effort to salvage liberalism; a renewed concern for the moral dimensions of education and professional life; a rediscovery and reemergence of the sacred;[17] and finally a "turn to interpretation" and story. The "interpretative bent" in the social sciences and the return to narrative is related to the never ending human need for story.

In each of these contemporary movements one finds a concern for values, modes of being, ways of life. These "subjective" values, in contrast to the claims of "objectivity" in science, have historically and continue today, to be systematically discounted and devalued. Under such cultural conditions they form an underground, antinomian stream.

The values carried in this stream do receive recognition from some quarters. When "subjective values" emerge from this underground stream and intrude into the disciplines they become "schools" or perspectives within the discipline, and often the critical conscience of the discipline, without for the most part actually threatening the core set of values within the discipline that resulted in the original devaluation of subjectivity in favor of objectivity.[18]

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[17] See David Spangler, Emergence: The Rebirth of the Sacred (1984); Jacob Needleman, New Religions (1984); Steven Tipton, Getting Saved from the Sixties: Moral Meaning in Conversation & Cultural Change (1981).

[18] I have argued elsewhere that the antinomian stream described here found its way into the disciplines in the name of the humanistic perspective. See Elkins, A Humanistic Perspective in Legal Education, 62 Neb. L. Rev. 494 (1983). In the 1950's humanistic psychology emerged as a "third force," a counterpoise to behavioral and psychoanalytic perspectives. The underground stream soon thereafter emerged in sociology and anthropology, and finally in such far flung disciplines as geography and traditional professions such as law and medicine.

HeinOnline -- 9 Legal Stud. F. 134 1985

The values identified with the humanistic perspective found in the antinomian stream that runs beneath and below the traditional mainstream of any discipline has now emerged as a "turn to interpretation," and a focus on narrative and story. The "turn to interpretation" and to narrative indicates a loss of faith in science. Narrative makes mystery possible, mystery which scientism would have us forget or ignore. Narrative helps us see the mystery in ordinary, everyday life. It is the purpose of narrative, of stories, to express the "excess of meaning" we experience in our lives. Narrative effects a transformation of events and sentiments into the present, into story, by which we give ordinary life in a technological world meaning, meaning that comes from that which science does not, and cannot speak. Narrative suggests a whole world of experience: teaching, writing, reading, listening, and telling stories.

Narrative rests on the poetic and metaphoric use of language, a use of language rooted in our participation in a social world. In narrative we learn about the world, but we also learn about the person with beliefs, values, dreams, and fears who is in the world. Writing and story telling render self and world into language, language into the heart of living. It is in the narrative dimension of our lives and those whose stories we tell and bear, write and teach, that one finds what James Hillman calls soulmaking. The soul speaks through narrative.

Narrative reemerges within a discipline unable to escape it's past, as a way of recovering or reclaiming an earlier, older (one might say "truer") perspective from "within" the discipline. This evolution takes place as those within the discipline return to earlier questions (meta-questions) and images of themselves "doing" the discipline.[19]

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[19] Alvin Gouldner has called for a "reflexive sociology" which would focus on the "doing of sociology." See Gouldner, "Toward a Reflexive Sociology," in Humanistic Society 171-181 (J. Glass & J. Staude eds. 1972). Gouldner suggests that one of the identifying characteristics of reflexive sociology is "the relationship it establishes between being a sociologist and being a person, between the role and the man [woman] performing it." Id. at 177. Gouldner's reflexive sociology calls for a sociology which looks closely at itself and those within the profession who "do" sociology. A reflexive sociology denies that the doing of sociology is value free, for it can never be free of the person who is the sociologists. For Gouldner's attack on the notion that sociology can be value-free, see, Gouldner, "Anti-Minotaur: The Myth of a Value-Free Sociology," in Sociology on Trial 35-52 (M. Stein & A. Vidich eds. 1965).

In sociology the interpretative perspective that I describe in this essay is associated with Robert Bellah and his emphasis on the moral meanings of action. See Bell, The Turn to Interpretation: An Introduction, 51(2) Partisan Review 215, 218 (1984).

HeinOnline -- 9 Legal Stud. F. 135 1985

There are some disciplines and professional endeavors that is hard to imagine without narrative. Psychotherapy, unless confined to (the black box of behaviorism is a contemporary narrative, a form of story-telling, with interpretation as its methodology and art. Psychology and anthropology, unable to shake their narrative traditions, are in the process of rediscovering and valuing interpretative strategies and story. Narrative is rediscovered in history, ethics, and theology.

In other disciplines, narrative lies more in memory than in practice. Philosophy,[20] history, law, and medicine, suffer from the loss of narrative and provide examples of disciplines where narrative has been driven underground. Without narrative in our disciplines stories go untold, narrative becomes memory and history. Imagining, remembering and revisioning are the raw material from which we concoct the antidote to forgetting. Narrative and story represent the recovery of the personal, the idiosyncratic, the subjective, and the sacred.

II.

A man named Charlie lived a few miles down the road from the Kentucky farm where I grew up. I saw him walking along the road, in his tattered clothes, stopping from time to time to pick up string, wood, or hubcaps he found along his path. I never tried to talk to Charlie. He seemed preoccupied in what he was finding or in moving down the road. On passing our house he had several miles to walk before he got home. I never saw him look toward our house. I asked my mother

"Why does Charlie walk when 'normal' people drive in the car?"

"Charlie is a hermit. Hermits act different than other people."

"What is a hermit?"

"A hermit is a man who lives by himself."

"Why would he live alone? Doesn't he have a family?"

"He has family. Some of them live down the gravel road that begins not far from his house."

"Well, why doesn't he live with them?"

"A hermit may have a family but he doesn't want to live with them.

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20 "Moral discourse. . .has returned to the center of disciplined philosophical inquiry." Daniel Bell, The Turn to Interpretation: An Introduction, 51(2) Partisan Review 215-219, at 216-217 (1984) (Bell remarks that "[t]he new moral discourse has given rise to fierce challenges to utilitarianism (with its implicit idea of the 'measurement' or 'optimality' of a greatest good, to be established by the felcific calculus)." Id. at 217.)

HeinOnline -- 9 Legal Stud. F. 136 1985

"Why?"

"We just have to assume that he had rather live by himself than with somebody. Maybe, someone hurt his feelings once. Maybe, he is hard to get along with and finds life easier when he is by himself. Maybe, he is crazy. . .Or just maybe, there is nothing wrong with him at all, and he just plain and simple wants to be a hermit."

Mother stopped peeling peaches and looked wistfully out the window at the road, as though sometimes she'd like to be alone. But I couldn't resist interrupting her reverie to ask another question.

"Well, who does he talk to?"

She sighed.

"He doesn't talk to anyone. The whole idea of being a hermit is that you don't have to talk to anyone."

* * * *

Stories speak of inclusion and exclusion, of leaving home and returning, of acceptance and rejection. Stories often show how we find a place in the world of others, or how we live a life trying to escape from others. Whatever place I find, whatever role I accept or reject, whatever stance I take, it is ultimately in relation to the culture in which I find myself and the communities that I try to create and those from which I wish to escape.[21]

In narrative there is meaning. Story is life. Story is eros, libido. Freud and Jung listen and see into, under, behind and around what the patient says about his own life. Both Freud and Jung gave us marvelous and telling stories of the world of the unconscious, stories that, with all their faults and false directions, persist today, perhaps more viable now than at any time since they were first told.[22]

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[21] MacIntyre argues that

> the fact that the self has to find moral identity in and through its membership in communities. . .does not entail that the self has to accept tbe moral *limitations* of the particularity of those forms of community. Without those moral particularities to begin from there would never be anywhere to begin; but it is in moving forward from such particularity that the search for the good, for the universal consists.

MacIntyre, supra note 16, at 205.

[22] On reading the stories told by Freud and Jung, see James Hillman, Healing Fiction (1983). See also, David James

HeinOnline -- 9 Legal Stud. F. 137 1985

Freud's method of listening uncovers life stories,[23] case histories, clinical vignettes. After Freud, biography itself takes on a new perspective.[24] How do Freud's stories and life histories compare with modern ego psychology or developmental psychology? What kind of telling of lives takes place in adult development theory? How do people talk about symptoms, pain, suffering, and pathologies?[25] How do I apply a theory to my own suffering? What kind of stories help us deal with our pathologies? Or for that matter what kind of psychologies?

Fisher, Reading Freud's Civilization and its Discontent, in Modern European Intellectual History: Reappraisals & New Perspectives 251-279 (D. LaCapra & S. Kaplan eds. 1982); Perry Meisel, Freud's Reflexive Realism, 28 October 43 (Spring 1984). Meisel points out that "Freud's narration and his patient's memory may appear to be different, but their structures are surely homologous if not finally identical in their interdependent production one of the other. . . . Reflexive realism narrates itself by narrating something else like it. . . ." Id. at 46.)

[23] For an example of the new scholarship using stories, see John Kotre, Outliving the Self: Generativity and the Interpretation of Lives (1984).

[24] See, e.g., Richard Ellmann, Freud and Literary Biography, 53 American Scholar 465 (Autumn 1984). For an example of a partial biography that reflects a neo-Freudian (i.e. Lacanian) sophistication, see Stuart Schneiderman, Jacques Lacan: The Death of an Intellectual Hero (1983).

[25] James Hillman argues that psychology should return to pathologizing, its central task. "Fundamental to depth psychology and to the soul is hurt, affliction, disorder, pecularity. . . ." James Hillman, "On the Necessity of Abnormal Psychology: Ananke and Athene," in Facing the Gods 1-38, at 1 (J. Hillman ed. 1980). The symptom is the starting point in modern depth psychology. It is the beginning of the journey into the labryinth of the soul.

> [A] symptom not only expresses an underlying psychic process but also may represent a positive attempt by the unconscious to force the individual into a process of consciousness, the aim of which is a progressive realization of the Self.

Russell A. Lockhart, Words as Eggs: Psyche In Language and Culture 31 (1983). Lockhart goes on to suggest that:

HeinOnline -- 9 Legal Stud. F. 138 1985

If there is to be a telling of lives, there must be listeners. Patients need doctors.[26] Doctors need patients.[27] Anthropologists have their informants, as do the police and school teachers. The compelling story will find an author. Biographies and autobiographies are written and read. The story is told. The story is written. The story is read. So long as culture exists stories will be lived and told.

Historians become listeners, and psychobiographers,[28] as well as archivists. Oral history makes its appearance. And if historians are to be listeners then they will appropriate the methods of those who are paid to listen, those who make a profession of it--the psychoanalyst. Psychohistory becomes a special disciplinary field.[29]

When we focus on stories, doing stories (writing, reading, telling) what are we to make of Charlie, the hermit? What kind of story remains untold? Does Charlie have no story? Is there no story without a telling, without listeners, without a text?

> To deprive an individual of his symptoms may be clothed in humanitarianism, but it may also deprive him of an opportunity to learn the meaning of his own life. It may, in fact, deprive him of the opportunity and will toward individuation.

[26] [W]e seem to have an insatiable need to talk about what it means to die and to confront the medical discourse on death with ourselves as experiencing persons. Tbe need is not restricted to the problem of dying. Almost everywhere the experiencing person is vigorously challenging the medical discourse which subtracts him from his body.

William Ray Arney and Bernard J. Bergen, Medicine and the Management of Living: Taming the Last Great Beast 41 (1984).

[27] [M]odern medicine identified itself with a discourse about life and death whose power lay not in conducting a dialogue with another, but in the capacity to speak to another who must listen silently if he wants to bear the truth spoken.

Id. at 26.

[28] See, e.g., W. Runyan, Life Histories and Psychobiography (1984); Peter Lowewenberg, Decoding the Past: The Psychohistorical Approach (1985).

[29] A field not without its critics. See e.g., David Stannard, Shrinking History: On Freud and the Failure of Psychohistory (1980).

HeinOnline -- 9 Legal Stud. F. 139 1985

Stories reflect a fundamental human need which "begins in the act of diving through the ordinary, routine surface of appearances. . . ."[30] Autobiography is "reflective effort made in the interest of giving or restoring meaning, purpose, and value to one's life. . . . To participate in the autobiographical mode, it is enough to reflect, to speak, or to act with an intention which is broadly self-narrative or self-revealing.[31] The "act of diving through" takes place when we see our own experience as storied.[32]

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[30] Gray, Autobiography Now, 4(1) Kenyon Review 31, 51 (Winter 1982).

[31] Id. at 33. See Albert E. Stone, Autobiographical Occasions and Original Acts: Versions of American Identity from Henry Adams to Nate Shaw (1982).

[32] The diving through is a part of everyday life. Rockwell Gray points out that there is an impulse or gesture toward autobiography in everyday life. "[T]o amble again through the streets of childhood, to pore over family albums or archives, or to collect books as mementos of earlier interests and intentions. . ." are in their own way autobiographical. Id. at 36. In ordinary speech and conversation we play out the impulse toward self-narration.
Conversations are central to story telling, to having a story.

> Indeed a conversation is a dramatic work, even if a very short one, in which the participants are not only the actors, but also the joint authors, working out in agreement or disagreement the mode of their production.

A. MacIntyre, After Virtue 196 (1981). Conversations are structured like other narratives, with beginnings, middles, and ends, and are in a sense, literary works.

> The embody reversals and recognitions; they move towards and away from climaxes. There may within a longer conversation be digressions and subplots, indeed digressions within digressions and subplots within subplots.

Id.

Richard Rorty has suggested that philosophy be viewed as a conversation. See R. Rorty, Philosophy and the Mirror of Nature 170, 371-72, 389-394 (1979).

> To see keeping a conversation going as a sufficient aim of

HeinOnline -- 9 Legal Stud. F. 140 1985

Story is one way that we deal with our experience and understanding of the world and ourselves in the world. And we can actively engage our own experience--in which case we become the teller of stories, our own or the stories of others. We can also live a life bound by the stories of others and deny that there is any story of self to be told. And at other times our stories become a form of self-deception.[33]

We find out who we are as persons by the story we tell, by the conversations we have with others, the way we imagine ourselves, and the way we are able to understand and reflect on the way our lives unfold. We don't see ourselves clearly as persons in the activities and work that we do until we recognize the story that we live out in our work and in our lives.

Stories are experiential, they tie us to the world we live in, to the concrete reality of our own lives. When we speak of what is real we tell stories. "In stories we meet what is concrete in experience, in the most concrete language we have."[34] A story "satisfies our sense of reality by registering the tensions of experience in a way that is irreducibly specific and complete."[35] "To be drawn into a story is to be personified, someone who can be addressed, who remembers and responds, who is underway in action.[36] It represents "the complex movements and interactions of beings who are themselves possessed of memory, imagination, the power to hear and answer in language and to respond in action, while they are

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> philosophy, to see wisdom as consisting in the ability to sustain a conversation, is to see human beings as generators of new descriptions rather than beings one hopes to be able to describe accurately.

Id. at 378. Conversation is "the ultimate context within which knowledge is to be understood." Id. at 389.

[33] "Opportunities for self-deception are never far away from any of us." Owen Barfield, History, Guilt, and Habit 56 (1979). On the problem of self-deception, see Postema, "Self-Image, Integrity, and Professional Responsibility," in The Good Lawyer 286-314, at 300 (D. Luban ed. 1983); Stanley Hauerwas, Truthfulness and Tragedy 82-98 (1977).

[34] Higgins, "Within and Without Stories," in Religion as Story 1, 31-32 (J. Wiggins ed. 1975).

[35] Id. at 27.

[36] Id. at 26-27.

HeinOnline -- 9 Legal Stud. F. 141 1985

underway."[37] A story is reflective of the "pulse" and "density" of the movement in our lives.[38] Stories make the lived experience of time possible.[39]

Stories help us explain both the ordinary reality of everyday experience and that which is beyond our understanding. Stories mediate between the meaning which we find, give, and take from our everyday world and that which comes from and is realized from beyond immediate experience.[40]

Narrative and storytelling transfigure the ordinary, the everyday, the prosaic, the mundane, the quotodian, into something that has meaning. The broken bits of glass and shards of old abandoned pottery that we call experience and memory are "made" into a new form, (or some preexisting form is "discovered"). That which was discarded and of no value finds it's way into the new picture, a mosiac that frames and presents that which was dispersed. The whole is greater than the sum of the parts, and thus storytelling is synergistic. When life feels fleeting, and we break up, fall apart, give way, then there is a need for story, for a new telling.

Stories point to beginning and ending, hope and fear, darkness and light. William James O'Brien, a theologian, has written of this darkness that surrounds our lives. "It is," O'Brien says, "the darkness

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[37] Id. at 27.

[38] Id. at 29.

[39] Without stories, as everyone knows, time would be monotonous. We tell stories not only to while away the time but also to shape it, render it meaningful, make it our own. Conrad's Heart of Darkness begins with men on a ship in calm water asking for a story to pass the time. Marlowe's tale is a cyclone upon that calm water. By its end, we have been taken not only into the heart of Africa but also to the eye of a dreadful story. We may be horrified by the destruction of Kurtz, the leading character, but at least something has happened. The story has told time.

Tom Driver, Patterns of Grace: Human Experience as Word of God 132-133 (1977).

[40] Stories in some ways are beyond meaning. "We narrate stories in order to make manifest whatever unsayable meaning resides in them." David Luban, Explaining Dark Times: Hannah Arendt's Theory of Theory, 50(1) Social Research 215, 242 (Spring 1983). Hayden White has made a similar point in suggesting that narrative is a way of expressing an "excess of meaning." White, supra note 1, at 29.

HeinOnline -- 9 Legal Stud. F. 142 1985

of our origins and the darkness of our destiny."[41] To see ourselves in darkness honors the depth of human experience (a depth that does not hide from death, horror, and evil).[42]

I cannot imagine a life without the eternal conflict which we offer as human beings. A life of suffering, of the will to endure to the end is itself a story. To give in, to give up, to fail, to submit to suffering is yet another story. To resist and fight, to rebell, to go into exile is yet another. To succeed, to have a career, to be a professional, to be a part of contemporary society is yet another story. Yet, we talk about careers, work, professionalism, professional identity, as if those aspects of our life, our work, our love have nothing to do with our stories.

Stories take on a social or collective dimension. They show how we are both distinctive and share something with others. James Higgins notes that "without both distinctiveness and commonality the story will ultimately be unsatisfying and one will continue to tell it agonizingly until both dimensions are uncovered in some fulfilling fashion." Stories define boundaries (which are the lifeblood of academic learning) and pull us together (across personal and social boundaries). Finally, stories mediate the inner subjective world and the outer, objective world, the private and public aspects of our lives.

How is a life to be imagined, re-membered, even as it is lived? What are the appropriate metaphors for a life? What does it mean to say that life is a journey, a pilgrimage? Mythic and heroic? In stories we tell of myths being lived, themes from fairy tales forming and shaping our lifes. There is myth in our stories, as we are in myth.[43] Story telling is one form of myth making. Myths are the ancient pre-histories of our stories. Fairy tales are the folk or ordinary expression of myth, stories which have a mythic dimension. When we are telling, talking, tattling, teaching, when we do stories, our own and others, we come closer to myth, we become mythmakers.

There is a myth of the heroic quest, a mythological motif found in virtually all cultures, one that is found in our own lives. One universal pattern is the leaving home, journey, trials, ordeals, tests, and then finally, returning home. Life is itself a journey, a long pilgrimage.

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[41] William James O'Brien, Stories to the Dark: Explorations in Religious Imagination 3 (1977).

[42] O'Brien suggests that "The. . .inner drama is begun when dark, turbulent feelings threaten to engulf a person. The conscious self, the daytime self, ordinarily has no interest in exploring the dark; it is only when egoconsciousness feels itself about to be engulfed that it acts." Id. at 41.

[43] Myth can be understood

HeinOnline -- 9 Legal Stud. F. 143 1985

Autobiographical reflection helps us see the myth in our contemporary lives, learn that we are enmeshed in myth. Myth is another name for a special kind of meaning that links an individual to that which lies beyond a solitary life, to an ultimate, to fates that lie beyond human purpose and design. We live out myths in our personal lives even as we participate in cultural myths that define how our immediate world will appear to us. Autobiography becomes mythic when the narrator finds him/herself becoming the hero.

A story invites telling and listening, a place and time for speaking and hearing. Stories bring us together, create social relations, for an audience, even of one, is a kind of community. Story and community have an even more direct relation. "[T]he story of my life is always embedded in the story of those communities from which I derive my identity."[44]

In stories we learn how women and men have different perspectives, different cultural experiences, different virtues and sensibilities, and speak different voices. The storied phenomenologies of our lived worlds are especially significant in the lives of women. In stories we discover and revision lived worlds. In stories we defy standard views, historical accounts, and social theories and embody our personal subjective existence.

Story can be no more a final answer, or the source of objective truth, than any other means of locating ourselves in the world. All stories are fictions, a form of truth, that can change and can be a form of self-deception. A story is

> no more authentic than I am now, and no less. If I am neurotic, self-serving, or in a posture of bad faith, the story I tell of myself will be the same and will tend to reinforce me as I am. I need thus the *critique* of my story by my neighbor, who may notice or remember what I am eager to forget. But most of all I need a summons, which may come through my neighbor, to responsible action in my present-future. Only this will enable me more truly to get at my story. As long as I evade the fullest ethical response to

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> as a story or series of images describing man's contact with the world of spiritual realities which interact with the physical world and give it form. Man's life is the main stage (although not the only one) on which spirit and matter touch each other. Because this contact can only be described mythologically, man's myths are usually relevant to the physical world as well as to the spiritual realm. . . .

Morton Kelsey, Myth, History and Faith 4 (1974).

44 A. MacIntyre, After Virtue 205 (1981).

HeinOnline -- 9 Legal Stud. F. 144 1985

my present situation of which I am capable, as long as Ichoose in society to look the other way, my story will not come clean. It will rationalize my avoidance.[45]

To hear and see our lives is story we learn of life's complexity, how lives fail and go astray, how promises are broken, and how dreams are realized. Complexity does not lend itself to summary statement or succinct descriptions and definitions, or to rules and principles. The experience we have as women and men is derived from a calculus of complex interacting life events--a calculus which requires the nuance of story. When we find our own voice and a story that expresses personal feeling and sentiment, we are ready to imagine ourselves as mythic beings, and locate our place in the larger scheme of things we call the universe. The telling, the writing, the Charlie silence of stories reflect the breath and depth of our lives.

III.

I write of disciplines, narrative, and story as prelude to what could be a fundamental shift in the humanistic understanding and expression of law, a form of legal studies that could be called narrative jurisprudence.[46] Narrative jurisprudence is another of the diverse ways that the underground stream of values emerges in legal discourse. It is another form of humanistic perspective. Consequently, it is a response to what are now residues of postivism and scientism is legal culture. Narrative jurisprudence emerges from the antinomian stream of subjective human values to give law a different meaning, to find in law a core that is not based on technical rationality.

Jurisprudence is generally viewed as a study of the philosophy of law, of the nature, source, and limits of law within a society and culture. Jurisprudence follows the dominant model of knowledge prevalent throughout the university. In this model professional knowledge is the application of scientific theory and technique to the instrumental problems of practice. Jurisprudence labors doubly under

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[45] Driver, supra note 39, at 136-137.

[46] I included with the ambit of narrative jurisprudence what is described as "the interpretative turn" in literary and humanistic studies. See e.g., Daniel Bell, The Turn to Interpretation: An Introduction, 51(2) Partisan Review 215-219,218 (1984); Sanford Levinson, On Dworkin, Kennedy, and Ely: Decoding the Legal Past, 51(2) Partisan Review 248-264 (1984) (Levinson chronicles the "renewed appreciation of the centrality of hermeneutic concerns" and the "interpretative turn" in legal studies. Id. at 249.)

HeinOnline -- 9 Legal Stud. F. 145 1985

the ethos and ethic of law and philosophy. Jurisprudence has been sandwiched between the analytical positivism of philosophy and its own form of positivism we call legalism. Law, as other disciplines, was conceived as a science. Oliver Wendell Holmes made clear in the earliest days of legal education that law too should ride the tiger science.[47] "An ideal system of law," Holmes argues, "should draw its postulates and its legislative justification from science."[48]

Jurisprudence has been in the same normative cage as the social sciences. In the post World War II period there has been a rebellion against the dominance of scientific methodologies in virtually every discipline. And law has been no exception. There is now an emerging awareness of the limits of technical rationality, an awareness that has become the basis for a humanistic perspective in each of the social sciences, and in law. Humanistic sociology, psychology, and anthropology are recognized perspectives along with quantative, technical, functionalist, and behaviorist orientations which dominate each of the social sciences.

Narrative jurisprudence emerges from the crack in the facade of positivist jurisprudence. Law may be the command of the sovereign but it is both more and less than this formal, hierarchial, power, rule-oriented concept or its variants would suggest. The new narrativists are not the first to make the point. Legal positivists have had their critics from the beginning.

From an anthropological perspective, positivism has never been a concept that would fully explain the idea and meaning of law. The view of law gained from other cultures, especially those cultures we call primitive, suggest that law is broader, deeper, and more diffuse than Western jurisprudence has intimated. Anthroplogist's who found no courts, no judges, no lawyers, none of the actors we associate with Western law, found law in the form of dispute resolution. Primitive societies have disputes and they resolve them. Their disputes are not so dissimiliar from our own. They involve property, accidents, crimes, all of the basic problems created when we live in the world with others.

Until recently, the anthropology of law seemed to have little direct relevance to an understanding of law in modern, technological societies. There were exceptions. A few law teachers found the anthropological work on law and dispute resolution in primitive societies to offer a lens through which we could see through the complexity and confusion, to the illusional and mythic aspects of our own legal system. The fundamental insight of these legal

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[47] See Elkins, Moral Discourse and Legalism in Legal Education, 32 J. Leg. Educ. 11, 31-35 (1982).

[48] The Occasional Speeches of Justice Oliver Wendell Holmes 85 (Mark DeWolfe Howe ed. 1962).

HeinOnline -- 9 Legal Stud. F. 146 1985

anthropologists was that no amount of complexity, or formal institutionalized structure eliminates the fundamental process of dispute resolution that takes place in a culture. The study of dispute resolution in primitive societies is in essence a study of the fundamental processes that undergird our own legal system.

Clifford Gertz, an anthropologist, in his Storrs Lectures at Yale, reminds us that law, as religion, art, science, the state, and the family is "in the process of learning to survive without the certitutes that launched it."[49] Law must now live without the certitude of science. A discipline, a way of thinking, a language, a conversation, a "culture of argument," a world of symbolic forms and gestures, are now the ways that we use to describe law in this post-modern era. Such ways of thinking and talking about law are fundamentally different than those presented in traditional jurisprudence. They are approaches to law, metaphors and images, that suggest that "legal thought is constructive of social realities rather than merely reflective of them" and that law is "a species of social imagination."[50] Geertz makes a point that has been made often. Law "is not a bounded set of norms, rules, principles, values, or whatever from which jural responses to distilled events can drawn, but part of distinctive manner of imagining the real."[51]

Bob Cover echoes Geertz in pointing out that our contemporary understanding of nomos and order is found in narrative and that the shift in perspective is to view law as meaning rather than law as power. The relationship of law to the meaning found in narrative is made explicit by Cover.

> No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. . . . Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.
>
> In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse--to be supplied with history and destiny, beginning and end, explanation and purpose. And every narrative is insistent in its demand for its prescriptive point, its moral. History and literature cannot escape their location in a normative universe, nor can prescriptions, even

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[49] Clifford Geertz, Local Knowledge: Further Essays in Interpretive Anthropology 217 (1983).

[50] Id. at 232.

[51] Id. at 173.

HeinOnline -- 9 Legal Stud. F. 147 1985

> when embodied in a legal text, escape its origin and its end in experience, in the narratives that are the trajectories plotted upon material reality by our imaginations.[52]

Legal practicalists and traditional jurisprudential scholars would have us see law in a different light, as what lawyers and judges do, as the written products of lawyers and judges, as the text that they work from the constitution, statutes, and existing judicial opinions--and the text they make. Geertz points out that the development of the history, sociology, and philosophy of law cannot adopt

> the sense of it held by its practitioners, caught up, as those practitioners are, in the immediate necessities of craft. We need, in the end, something rather more than local knowledge. We need a way of turning its varieties into commentaries one upon another, the one lightning what the other darkens.[53]

Geertz points the way to a view of law less as a distinctive discourse that constitutes a methodology and language, but as a "descriptive explication of imaginative forms," forms that are derived from local knowledge, from what happens and its said, felt, thought, and experienced when law in invoked, when disputes are settled.[54] Geertz argues that law, then is a form of "local knowledge, local not just as to place, time, class and variety of issue, but as to accent-vernacular characterizations of what happens connected to vernacular imaginings of what can. It is this complex of characterizations and imaginings, stories about events cast in imagery about principles, that I have been calling a legal sensibility."[55]

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[52] Cover, Nomos and Narrative, 97 Harv. L. Rev. 4, 4-5 (1983).

[53] Geertz, *supra* note 49, at 233.

[54] *Id.* at 234.

[55] *Id.* at 215.

[56] In anthropology, the theme of interpretation is associated most directly with Clifford Geertz, in his emphasis on the 'symbolic' level of discourse rather than social-structural relations, on what he has called. . .'thick description' in order to understand the complexity and texture of a culture, and the emphasis on particularity or 'local knowledge.'

Bell, *supra* note 1, at 218.

HeinOnline -- 9 Legal Stud. F. 148 1985

While Geertz is the formost figure in what is now called the interpretative approach to anthropology,[56] he joins others who have long maintained the narrative tradition in anthroplogy. Gregory Reck, an anthropologist, notes that:

> Humans are story-creating and story-telling animals. We live by stories, we remember by stories and we dream by stories. In a very real sense we domesticate this wild world of ours by narrative. It is little wonder that anthropology, as the holistic study of the human animal, would find a place for narrative within its disciplinary boundaries, even if it is at the fringes."[57]

Narrative anthropology "is simply story-telling. . . . It is an attempt to understand a story-telling animal by being a story-telling animal."[58]

Reck argues that the discipline of anthropology is a narrative enterprise because it is a written or oral presentation of what is seen and heard in the course of fieldwork. While Reck is factually correct he makes too much of the point. Outside of matnematics all of science is expressed in language, in written reports. It is not such written and oral presentations of human phenomena that can claim to be narrative. Scientists may be story tellers, as some clearly are,[59] but not story-tellers in the sense that Reck is suggesting. If that were the case, all scientists would be enamoured with narrative. While all anthropologists, like all scientists, are bound by their need for language, language does not lead inevitably to narrative. What then makes some users of anthropological language "narrative anthropologists"?

Anthropologists honor the narrative dimension of their enterprise not by simply using language, but by a description and explanation that is itself a story, a story of lived human experience. To make meaningful the manifold states of human experience pushes the anthropologist to ever more inventive and evocative uses of language, ultimately to "ethnographic fiction" as well as simple stories of

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[57] Reck, Narrative Anthropology, 8(1) Anthropology and Humanism Quart. 8-12, at 8 (1983).

[58] Id. other anthropologists have sugggested that when their craft involves a special love of words the anthropologist becomes a "word-shaman." Richardson, The Anthropologist as Word-Shaman, 5(4) Anthropology and Humanism Quart. 2 (1980).

[59] See, e.g., Loren Eiseley, The Night Country (1971); All the Strange Hours (1983).

fieldwork and helpful informants.[60] Historically, anthropologists have written fictional as well as descriptive accounts of the cultural phenomena they encounter. In fiction, human experience can be presented in ways that is more meaningful to an outsider than ethnographic reports rich in descriptive detail.

Finally, narrative anthropology reflects and supports what has been called reflexive anthropology. Reflexive anthropology focuses on the effect of the story-teller on the story being told and the effect of the telling on the anthropologist. Reflexive anthropology incorporates the knowledge that the observer affects the behavior of the observed. She sees herself as part of the inquiry, rather than as a reporter of something seen or heard "out there." The reflexive anthropologist integrates as "anthropological knowledge" what he knows of himself. When narrative anthropology includes reflexive anthropology it brings the story of the anthropologist into the narrative so that in doing anthropology there is a looking at self.

Anthropology tells us something about culture, how culture works, and what it means to have and be in a culture. James White, one of the foremost exponents of law as narrative,"[61] argues that law is constitutive of community and forms a particular kind of culture, a "culture of argument." White sees law as that cultural commodity from which we do our world making. Law, White contends,

> is the constitution of a world by the distribution of authority within it; it establishes the terms on which its actors may talk in conflict or cooperation among themselves. The law establishes roles and relations and voices, positions from which and audiences to which one may speak, and it gives us as speakers the materials and methods of a discourse. It is a way of creating a rhetorical community over time."[62]

Law from this perspective

> is best regarded not so much as a set of rules and doctrines

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[60] See, e.g., Elenore Smith Bowen, Return to Laughter: An Anthropological Novel (Natural History Library edition, 1964).

[61] See James B. White, The Legal Imagination (1973); White, The Fourth Amendment as a Way of Talking About People, 1974 Sup. Ct. Rev. 165 (1974); White, Making Sense of the Criminal Law, 50 U. Colo. L. Rev. 1 (1978); White, The Ethics of Argument: Plato's Gorgias and the Modern Lawyer, 50 U. Chi. L. Rev. 849 (1983); White, When Words Lose Their Meaning, supra note 4, at 266.

[62] When Words Lose Their Meaning, supra note 4, at 266.

HeinOnline -- 9 Legal Stud. F. 150 1985

or as a bureaucratic system or as an instrument for social control but as a culture, for the most part a culture of argument. It is a way of making a world with a life and a value of its own. The conversation that it creates is at once its method and its point, and its object is to give to the world it creates the kind of intelligibility that results from the simultaneous recognition of contrasting positions. This recognition is necessary to the rational definition and pursuit even of the most selfish ends. Without it, neither reason nor ambition can have form or meaning.

The fact that the conversation of the law is largely argumentative has important consequences of its own. Legal argument exposes in clarified and self-conscious form--in slow motion, as it were--the processes of agreement and disagreement--of persuasion--by which this part of our culture, and our culture more generally, are defined and transformed. For in legal argument the state of the discourse itself how we should think and talk is a constant subject of conscious attention and debate. This means that the contours of the culture are pushed to their limits and marked with extraordinary distinctness. As the argument proceeds, each speaker tests the limits of his language, subjecting its every term and procedure to all the strain that it can take--that we can take--in order to make things come out his way. And since he must always operate within strict limits imposed by time and the interests of his audience, he is constantly forced to discriminate among the arguments he might make, putting forward what seems best, holding back what is weak or unimportant, and so on. As the materials of the legal culture are tested in this manner, are put to work--they are defined and reorganized in especially clear and reliable ways. This makes it possible to think clearly about their transformation.

Consider this point in the life of the modern lawyer. When he writes a brief or makes an argument, in court or in a negotiation, he offers us his best performance of the state of his art, as does the lawyer who opposes him. Between them they provide a momentary definition of the resources and limits of their legal culture. When the lawyers have done all they can and their capacities for argument are spent, we see where we are in a new way, a way that the unusued materials of argument, lying about without order, arrangement, or force--mere sets of cases, rules, and commonplaces-would never allow. Each lawyer has made every proposal for change he thinks possible and has had to accept what he cannot change. In argument of this kind the

> speakers are forced to perform an allegiance to their common language to the ways of talking that make the dispute intelligible and the community possible. One of the functions of a culture of argument, the law among others, is to provide a rhetorical coherence to public life by compelling those who disagree about one thing to express their actural or pretended agreement about everything else. . . .
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> Legal argument by its nature contrasts one way of talking with another, one version of a narrative with another, and in this way gives its users (and their community) the benefits of contrast and tension. The lawyer speaks from and to various parts of the self, in various modes, and is always subject to the double duty of making sense both in ordinary English and in the specialized language of the law. It is in fact the inconsistencies among the lawyer's ways of talking that gives him the purchase necessary to propose, and to resist, cbanges in his discourse."[63]

Law forms a culture of argument from the conversations that take place in the name of law. Law is a special kind of conversation, a way of talking. For example, a judical opinion is not only an exercise of power, but also "a continuing and collective process of conversation and judgement."[64] The legal case is a narrative in which tensions and contradictions in our social life and culture are explored.

White addresses narrative as on-going conversation, in world building, and a culture defining community. In *The Legal Imagination* White envisions the lawyer as a storyteller, and in *When Words Lose Their Meaning* he outlines the role that litigants play in the narrative of law.

> The fact that the case is always narrative means something from the point of view of the litigant in particular. For him the case is, at its heart, an occasion and a method in which he can tell his story and have it heard. He has the right to a jury, to insure that he heard. He has the right to a jury, to insure that he will have an audience that will understand his story and speak his language. The presence of a jury requires that the entire story, on both sides, be told in ordinary language and made intelligible to the ordinary person. This is a promise to the citizen that the law will ultimately

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[63] Id. at 267-68

[64] Id. at 264.

HeinOnline -- 9 Legal Stud. F. 152 1985

> speak to him, and for him, in the language that he speaks, not in a technical or special jargon.[65]

Narrative, finally, places special demands on judges. If the law is a conversational process, a narrative, then the judge

> will have to speak in an extraordinarily rich and complex way, not in a voice that is merely bureaucratic and official. To be true to the actual difficulties of a real legal case, an opinion must be full of the kind of life that comes from a set of acknowledged tensions: between tbe two versions of the story before the court: between the stories so told and the language of legal conclusion; between the demand that like cases be treated alike and the recognition that cases never are 'alike'; between the fidelities owed to the past and the future; between an awareness that the case is a particular dispute between individual persons and a sense that it is typical as well; and so on. . . . In the complexity and formality of his speech, its metaphoric character and its openness to uncertainty, in its tension between the general and the particular, the judge must indeed be something of a poet."[66]

For White, a legal case "proceeds by a conversation in which each speaker is invited to present an ideal version of himself, speaking to an ideal audience."[67] White sees law as constitutive of a community in which the various constructions of language and reality are tested against each other and in doing so give law its strength.[68] It is in the presentation of different stories within a culture of argument that law

> makes room for different voices and gives a purchase by which culture may be modified in response to the demands of circumstance. It is a method at once for recognizing others, for acknowledging ignorance, and for achieving cultural change.[69]

White views the adversary process in a much more favorable light

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[65] Id. at 265.

[66] Id. at 269.

[67] Id. at 274.

[68] Id. at 273.

[69] For the litigant, the lawyer, and the observer alike, the

HeinOnline -- 9 Legal Stud. F. 153 1985

than many social critics.[70] White cautions us that he has not set out to describe the real world of lawyers and judges and that his emphasis on the narrative dimensions of law is not a justification for the actual operation of the legal system. White has presented a cultural critique of tbe legal profession which confronts the legal community with the highest ideal that we espouse. White's idealism presents law as possibility, as a culture of promise. And so White's version of law is idealistic and poetic; criticism as poetic reimagining.

In the closing pages of *When Words Lose Their Meaning* White summarizes his views and restates his case that law from his perspective is better seen as one of the humanities than as a branch of the social sciences. Law is itself "a method of learning and teaching," in which we focus on "the kind of relations that we establish with our inherited culture and with each other when we speak its language." It is in the rhetoric community formed by the speaking of this inherited language that we find the meaning of law.

> The law is a set of social and intellectual practices that have their own reality, force, and signficance. It provides a place that is at once part of the larger culture and apart from it, a place in which we can think about a problematic story by retelling it in various ways and can ask in a new and self-conscious way what it is to mean. Law works by a process of argument that places one version of events against another and creates a tension between them (and between the endings appropriate to each); in doing so it makes our choice of language conscious rather than habitual and creates a moment at which controlled change of language and culture becomes possible. The rhetorical structure of the law makes a place for each party and defines a relation between them by establishing the ways they may talk; in doing this it suggests a conception of justice as equality, for a person may find himself in any of these roles.[71]

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central ethical and social meaning of the practice of the adversary hearing is its perpetual lesson that there is always another side to the story, that yours is not the only point of view. For the actors as for the judges, the juxtaposition of the two incompatible stories makes us ask in what language the story should be told again and a judgment reached. . . .

Id. at 266.

[70] See White, The Ethics of Argument: Plato's Gorgias and the Modern Lawyer, supra note 61.

HeinOnline -- 9 Legal Stud. F. 154 1985

Our thinking about law is changing and requires a different perspective. Geertz believes it will be a shift away from the functionalist perspective in which law is imagined

> as a clever device to keep people from tearing one another limb from limb, advance the interests of the dominant classes, defend the rights of the weak against the predations of the strong, or render social life a bit more predictable at its fuzzy edges (all of which it quite clearly is, to varying extents at different times in different places); and a shift toward hermeneutic thinking about it as a mode of giving particular sense to particular things in particular places (things that happen, things that fail to, things that might), such that tbese noble, sinister, or merely expedient appliances take particular form and have particular impact. Meaning, in short, not machinery.[72]

Law, one discourse among many, must be reimagined in the context of other discourses, if it is not to be cut off and isolated from the world it seeks to govern. Geertz contends that law must be

> rejoined to the other great cultural formations of human life--morals, art, technology, science, religion, the division of labor, history (categories themselves no more unitary, or definite, or universal than law is)--without either disappearing into them or becoming a kind of servant adjunct of their constructive power. For it, as for them, the dispersions and discontinuities of modern life are the realities that, if it is to retain its force, it must somehow fathom.[73]

Whether it will do so is an open question.

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71 Id. at 273. Robert Cover has recently presented a similar view of the law as narrative but places less emphasis on language and more on the nomos or normative world created by legal discourse.

> We inhabit a nomos-a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void.
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> A legal tradition is hence part and parcel of a complex normative world. The tradition includes not only a corpus juris, but also a language and a mythos--narratives in

HeinOnline -- 9 Legal Stud. F. 155 1985

[71] (Continued) which the corpus juris is located by whose wills act upon it. These myths establish the paradigms for behavior. They build relations between the normative and the material universe, between the constraints of reality and the demands of an ethic. These myths establish a repertoire of moves--a lexicon of normative action--that may be combined into meaningful patterns culled from the meaningful patterns of the past. The normative meaning that has inhered in the patterns of the past will be found in the history of ordinary legal doctrine at work in mundane affairs; in utopian and messianic yearnings, imaginary shapes given to a less resistant reality; in apologies for power and privilege and in the critiques that may be leveled at the jusificatory enterprises of law.

* * *

The codes that relate our normative system to our social constructions of reality and to our visions of what the world might be are narrative. The very imposition of a normative force upon a state of affairs, real or imagined, is the act of creating narrative. The various genres of narrative--history, fiction, tragedy, comedy are alike in their being the account of states of affairs affected by a normative force field. To live in a legal world requires that one know not only the precepts, but also their connections to possible and plausible states of affairs. . . . Narratives are models through which we study and experience transformations that result when a given simplified state of affairs is made to pass through the force field of a similarly simplified set of norms.

Cover, supra note 52, at 4, 9, 10.

[72] Geertz, supra note 49, at 232.

[73] Id. at 219.

HeinOnline -- 9 Legal Stud. F. 156 1985