

Law as Lore

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Abstract

Stories are central to law. Yet narrative analysis, the key analytical technique in the social sciences for analysing stories, is largely unknown in legal scholarship. This article investigates the central tenets of narrative analysis as a social scientific research method. It goes on to explore its possibilities and pitfalls for legal scholarship.

Keywords: Empirical legal research; Qualitative research; Narrative analysis

Introduction

Law is saturated with stories. People tell their stories to lawyers; lawyers tell their clients' stories to courts; legislators develop regulation to respond to their constituents' stories of injustice or inequality. In legal education, professors devise hypothetical scenarios to test student understanding of legal doctrine; in law examinations and assignments, students construct advice to fictional clients. The common law legal system derives many of its foundational principles from case law — in effect, stories with legal solutions — that have accumulated over time. The civil law system, despite a different design centred on legal codes, also relies on judicial story-telling to interpret the code provisions and flesh out the gaps.

Law, in short, is lore.

Despite this, narrative analysis — the key empirical technique to analysing stories in the social sciences — occupies only a niche status in legal scholarship. This is puzzling. Narrative analysis seems well-suited to much work on law. Policy-driven legal research, for example, is directed to understanding the normative framework and utility of the law; socio-legal scholarship is concerned with how society experiences and engages with the law; and the legal literature on human rights is interested in law's impact on disadvantaged or vulnerable groups. And as Patton [1] observes, "the central idea of narrative analysis is that stories and narratives offer especially translucent windows into cultural and social meanings."

What explains the marginal status of narrative analysis in legal research? It is not as if the method is unknown. Indeed, narrative analysis enjoys prominence in the social sciences literature. Following a long tradition in literary studies dating back to Russian formalism in 1928, narrative analysis emerged in social sciences in the 1980s and entrenched itself as a popular method by the 1990s [2-3]. In law, however, it appears only in some feminist legal writing [4-8] and critical race theory [5,9-14].

Perhaps, the better explanation is that much about narrative analysis — what it is and what it entails — is uncertain. As Abell [15] notes, "Although the term narrative and cognate concepts ... are widely used ... no settled definition is yet established." Czarniawska [2] goes further:

In my rendition, narrative analysis does not have a 'method'; neither does it have a 'paradigm', a set of procedures to check the correctness of its results. It gives access to an ample bag of tricks — from traditional criticism through formalists to deconstruction — but it steers away from the idea that a 'rigorously' applied procedure would render 'testable' results.

This is not necessarily a weakness. Indeed, I argue that the open-endedness of narrative analysis is precisely what gives it its power.

What is Narrative Analysis?

Put simply, narrative analysis is the analysis of people's stories [1,16,17]. Social science researchers study these stories because they offer insights into how people understand and experience the world Hinchman and Hinchman (1997), [3,18]. As Cronon [19] explains:

Narrators create plots from disordered experience, give reality a unity that neither nature nor the past possess so clearly. In so doing, we move well beyond nature into the intensely human realm of value.

Data typically comes from oral sources, such as interviews [3], observations of conversations in self-help groups Morgan (1999), oral histories and sermons [20]. But written sources may also reveal narratives, such as diaries [14] letters [18], trial transcripts Burns (2004), [6-13] and newspaper accounts. Although most researchers locate narratives within qualitative data [3,16] has recently proposed that quantitative data collected using sample methods, especially longitudinal data, may also be rich with narrative potential.

Epistemologically, narrative analysis assumes that meanings are fluid and contextual, not fixed and universal [18]:

Narrative knowledge tells the story of human intentions and deeds, and situates them in times and space. It mixes the objective and the subject aspects, relating the worlds as people see it, often substituting chronology for causality. In contrast the logic-centric knowledge looks for cause-effect connections to explain the world, attempts to formulate general laws from such connections, and contains procedures to verify/falsify its own results [2].

Narrative analysis presumes a self-consciously involved — rather than a detached — researcher. To capture people's ordinary experiences without disturbing their narrative character, the researcher must blend empathy with description and interpretation [18]. More profoundly, the researcher's "voice, presence and subjectivity" will infuse the analysis [17], as will their "meta-stories" of personal values, politics and

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theoretical commitments [18], Wood (1992). Researchers may even go so far as to cooperate with participants in gathering and reflecting on data Morgan (1999).

There is no set procedure for analysing and interpreting narratives. Researchers agree that narrative “imposes order on a flow of experiences” and its analysis involves mapping out “how it is put together, the linguistic and cultural resources it draws on and how it persuades a listener of authenticity” [18]; they differ, however, on how to do this [2]. Techniques range from formal analytic narrative, narrative explanation, narrative structural analysis and sequence analysis to poetics, hermeneutic triad and deconstruction.

Formal approaches to narrative analysis are diverse. Some formalists such as Labov [21], Lobov and Waletzky (1967), cited in [18] argue that narratives are best understood in terms of their structural properties; others, such as Burke (1945), cited in [18] understand narratives by reference to the grammatical resources that narrators draw on to shape their stories; and yet others [22] rely on lexical techniques — especially the figurative and topological use of language — to interpret narratives. Researchers working in a more oral tradition analyse pitch and pauses, and use poetic units, stanzas and strophes to examine the coherence, organization and meaningfulness of talk [18].

A more layered approach to narrative analysis looks beyond meaning (semantics) and structure (syntax) to include interactional context (pragmatics) Mishler (1995), cited in [3]. This analysis additionally focuses on the relationship between the narrator and his/her audience to reveal meanings about social and personal relations [3,18]. It may also take into account the broader context, such as the historical moment, race, class and gender [18].

Post-modern and post-structural scholars may rely more on perspective or deconstruction Hernadi (1987), cited in [2], for example, and develops a hermeneutic triad as follows:

- Stand under the text (that is, understand or explicate the text);
- Stand above the text (that is, explain or disassemble the text to see how it is made); and
- Stand in for the author (that is, explore or bring one’s own life and preoccupations into the text).

Martin [23] relies on deconstruction techniques such as locating hidden ideologies and false dichotomies in the narratives.

A key advantage of narrative analysis over other qualitative methods is that it does not fragment the data [20]. Traditional approaches to qualitative analyses fracture texts in the service of interpretation and generalisation, eliminating the sequential and structural features that characterize narrative accounts and coding responses out of context [18].

Lessons for Law

One of the strengths of narrative analysis is that it provides rich insight into social life [2,20]. This is because of the authenticity that comes from respondents being empowered to tell their own stories in their own words. It also comes from analysing stories holistically rather than fragmenting the data [20]. However, as Elliott [3] notes, narrative methods are more useful for constructivist research questions (what an experience means to subjects) rather than realist questions (what is the state of reality). Narrators necessarily distort reality because they are making sense of, rather than reporting on, the real world.

Constructivist research questions are also helpful in combating one of the key weaknesses of the narrative approach - the generalizability of its findings. As Neuman [17] writes, “the narrative plot is embedded in a complex constellation of particular details, making universal generalizations difficult.” However, as Elliott rebuts [3], narrative research will degenerate into mere description unless researchers are allowed to draw broader inferences from their work. Constructivism—a focus on inter-subjective meanings rather than the interior life of the individual—is one way to ensure the robustness of inferences, but Elliott [3] also recommends that researchers:

- Take care to note the temporal and historical contingencies of their research;
- Ensure against reifying language; and
- Broaden their sample, even though (given how time intensive narrative analysis is, it will always be selective).

The context-specific nature of narratives, therefore, is the key to any evaluation of narrative studies. First, it informs which types of research questions are better suited to narrative inquiries (constructivist rather than realist). Second, it highlights the possibilities and pitfalls of the method: on the one hand, narratives add authenticity by drawing on fully-drawn accounts of lived experiences; on the other, they confound generalisations. This discussion might be recast in more traditional terms — that is, that narrative inquiries have “reliability” insofar as they are directed to issues of inter-subjectivity; that they score well on “internal validity”; but that they are more problematic on “external validity”. Some proponents of narrative research, such as Elliott [3], believe that these traditional tests, if appropriately modified, are useful measures of the quality of narrative studies.

Other scholars fiercely disagree Neuman [17], for example, dismisses the relevance of reliability. Narrative research, after all, looks at evolving, fluid, historically contingent and context-specific accounts of experience; it is not designed to deliver stable findings. In a similar vein, a number of scholars [24-26] have attempted to develop alternative quality frameworks for qualitative studies, but none directly targets the evaluation of narrative inquiries. Only Riessman [17] has developed a nuanced framework for addressing the relative merits of narrative-based scholarship. Rejecting “formulas and recipes” [17], Riessman cites “trustworthiness” as the central criterion in her framework.

So what can law scholars take from this overview of narrative analysis and a critical review of its strengths and weaknesses? Certainly, narrative analysis opens up exciting new avenue of inquiry. First, there is rich narrative potential within sources easily accessible to the legal researcher, such as judgments and trial transcripts. The multiple ways of conducting narrative analysis offers promise as well as sounds a warning. While it means researchers are free to explore techniques on their own terms and in accordance with the imperatives of their research question, they do need to carefully document their research process to ensure trustworthiness. Due diligence, it seems, is a priority not only for trial attorneys but also for narrative-focused legal research scholars!

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