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STORIES PEOPLE TELL

LORRAINE CODE*

To those of us who are neither practitioners nor teachers of law, to question the status of the law as the embodiment of a set of principles which can be applied judiciously, in both senses of the word, to human conduct and institutions, is to question the status of something taken to be almost as sacrosanct as science, and as immune from criticism both in its methodology and in its picture (reached through that method) of how things are. Even when we see ample evidence, in press reports, of the degree of arbitrariness only too often apparent in the application of these principles, we tend to regard such occurrences as aberrant, and to retain a faith in the constancy and impartiality of 'The Law,' somehow elevated above its human creators and sustainers, and reified. And so it is too with science. The phrase 'science has proved' tends to erect barriers around such alleged proof, daring the unconvinced to cast doubt upon truths attained by so purely objective, and hence impeccable, a methodology. Moreover, there are commonly taken to be marked differences between science and art, fact and fiction, demonstration and narrative, just as legal strivings for facts leading to proof beyond reasonable doubt are believed to contrast both with the ambiguities of story telling and with indications that all human events and circumstances are open to interpretation.

Philosophers are coming more and more frequently to suggest, however, that there may be *no* facts of the matter in any absolute sense, either in science or in law, and that it really all amounts to telling plausible stories. Now stories either about facts (to retain the old terminology) or about fantasies cannot be absolutely free floating, and indeed the former are more constrained by demands of plausibility than the latter, which may only be constrained by some minimal need for consistency. So one need not opt for an 'anything goes' breed of relativism in suspecting that, beyond the level of bumping into ordinary material objects in the environment, and having a high degree of certainty about their solid reality, we may have to opt for better or worse stories rather than the Truth. Nor is it clear whether there could be any extra-narrative vantage point from which to adjudicate between competing accounts.

But the scope of the stories we tell in our efforts to make sense of

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experience is constrained both by what we are (however undefinable that may be) and by what the world is (however elusive of clear and comprehensive description that may be). There is no contradiction involved in claiming to be realists as we try to tell them, even though we may suspect all the while that no single story can either tell the whole truth, or capture for all time the truths that it may tell. It makes sense for us to assert that 'reality' exists independently of us because of our constant experience of the recalcitrance of objects and events in the world to our wishes and hopes. The fact that we cannot conjure such objects and events away is sufficient evidence that we must not have conjured them up in the first place. The telling of experience is a bit like a detective story: often it is abundantly clear how things could not possibly have been, long before we know how they really are or were.

Just as science, particularly since Bacon, has claimed to offer protection from the chaos, confusion, and apparent unpredictability of nature, so law has claimed to offer protection from incipient chaos, confusion and arbitrariness in the actions of our fellow human beings. The promise of science to liberate human beings from thralldom to superstition has its counterpart in the promise of law to vanquish authority "under the banner of reason" (cf. Johnson and Scales, p. 445). And it would be foolish to deny the achievements that these thought structures, and the institutions based upon them, have made possible. But every achievement has its price, and it is the price that we pay for elevating law to the status it has come to enjoy that Johnson and Scales, in this pathbreaking paper, are asking us to consider. The questions they raise about the law are echoed in, and echo, questions some recent critics of science are also coming to pose.

The new kind of thinking Johnson and Scales are moving toward depends, to a great extent, upon the development of an imaginative approach to experience. This would break the hold both of a deeply-entrenched tendency to slot events—and other people—into ready-made categories, and of a set of dichotomies at the heart of our thinking, in terms of which we are inclined to think that the world quite naturally presents itself to our understanding. Categories are both enabling and constraining features of thought: without them, conceptual thinking and language would seem to be impossible; but the problem is that their ready application tends to obscure the complexities of experience allegedly captured in the labelling.

This point is well illustrated, with reference to the practice of clinical psychology, in Charles Rycroft's review of Oliver Sacks, *The Man Who Mistook His Wife For a Hat and Other Clinical Tales* (in *The New York Review of Books*, March 13, 1986). Rycroft quotes Sacks:

There is no "subject" in a narrow case history; modern case histories allude to the subject in a cursory phrase ("a trisomic albino female of 21"), which could as well apply to a rat as a human being. To restore the human subject at the centre—the suffering, afflicted, fighting, human subject—we must deepen a case history into a narrative or tale; only then do we have a "who" as well as a "what," a real person, a patient, in relation to disease—in relation to the physical.

He sees Sacks's aim in the book to be one of telling

stories or tales about his encounters with patients, in order to demonstrate that it is possible to be objective and subjective at the same time, that the gulf between the psychical and the physical can somehow be bridged . . . (p. 11).

Rycroft clearly believes that categories and dichotomies circumscribe thought and understanding, and he supports the view that narrative might indeed be a means of breaking out of this circumscription.

What is at issue in this discussion of clinical psychological practice, as in Johnson and Scales' view of legal practice, is the nature and extent of our claims to know other people well enough to pronounce upon their circumstances—and to pronounce in ways which, often, have profound effects upon their capacities to function well as human beings. In the 'cursory phrases' with which, on Sacks's account, modern case histories allude to the subject, there is evidence of only a minimal effort to know that subject: one or two objectively observable features are permitted to classify her, to sum her up. The most important dimension missing from such a categorization is any recognition of her as a human self, with experiences, whose view of her own situation is as worthy of exploration as is the allegedly objective 'expert's' view of her. It is by reconstructing such situations in terms of an interplay between 'expert' views and a subject's own experiences, I assume, that Rycroft sees the possibility of being subjective and objective at the same time, hence of breaking out of one firmly entrenched dichotomy.

Now this is no easy task. It requires an effort to become aware of that "pair of glasses on our nose through which we see whatever we look at" (Johnson and Scales, p. 441, quoting Wittgenstein). Before we can consider taking them off, we must be prepared to face uncertainty, and to approach the world with blurred vision. In fact, it requires a willingness to learn to see all over again, and that, in turn, requires training in sensitivity, and in imagination. It is here that stories people tell are so important, even though they may not be *true*. Indeed, in turning our attention, whether as lawyers, as clinicians, or as philosophers, to the stories people tell, the first and deepest presupposition that we may need to abandon is

the presupposition that human beings have privileged access to the truth about *their own* experience.

So this task seems to involve us in paradox after paradox. Not only must we suspend our old ways of seeing, but we must try to adopt postures that will result in our seeing less rather than more clearly. Not only must we turn away from categories and theories toward experience, but we must allow that narrative accounts of such experience may not afford immediate access to the truth. Even an account of my own experience, told as carefully and as honestly as I can tell it, is only one way among many of recounting those events: even events that appear to be privately *mine*. Psychiatric practice is premised on the view that we often do not understand our own experience, and quite often it seems to succeed in helping us to do so, or at least in showing us another fully plausible perspective on it. Moreover, neither the self that tells stories nor the self about which stories are told is a fixed entity: often, indeed, changes are effected in the very telling of the stories. So truths realized may be ephemeral to the point of not holding beyond the moment of their recounting. Where, then, can we begin, and how can the process of offering an account upon which judgment is to be passed ever reach a point of completion? I think the short answer is that both starting points and finishing points are, to a vexing extent, arbitrary, even though some, in virtue of the consensus they enjoy, *seem* to be less arbitrary than others. But this does not mean that each one is as good as every other one. There are more and less responsible ways of proceeding, and it is these that we must come to discern.

Certainly a minimalist, reductivist stance would seem to be the least responsible, and that, I presume, is part of what Johnson and Scales want us to see. There are *reasons* for taking this to be so. In the interest of ease of analysis, manipulation, and/or prediction, a minimalist account focuses upon as few salient features of a subject or a situation as will allow a pronouncement to be made. There is almost a 'cleanliness is next to godliness' presumption in the (often unspoken) claim that a clean, uncluttered analysis is better than a rich and multifaceted, but probably messy and ambiguous, account. Charges of irresponsibility levelled against analyses conducted on the basis of such claims attach to the contrary view that one must know someone/something as well as possible before such pronouncements can reasonably be made, and that such knowledge is simply not accessible through reductivist approaches. But even in moving away from minimalism, we are faced with the constant problem that we cannot avoid making judgments about which details are worthy of inclusion. If they are to be made responsibly, such judgments require a basis in sensitive, imaginative, well-trained perception. We have to learn to respond to what is in front of us, and to assess its significance.

Reductivist stances such as the one Sacks cites tend to interpose theoretical tenets and presuppositions *between* subject and object, creating and maintaining a rift, a dichotomy between them, rather than allowing knowledge and belief to emerge out of a free interplay of subject-and-object, interconnected and reciprocally influential. In short, too much structure, too rigidly defined and narrowed down, tends to close off more possibilities than it opens. And I take as a working assumption that it is better, within reason, to allow more possibilities rather than fewer, where one's aim is to understand rather than categorize. I take it as a further working assumption that, especially where other people are the subject of inquiry and action based upon it, it is better to understand than to categorize, and that the latter often precludes the former.

Stories people tell capture partial truths which contribute to this understanding. Novels, plays, and poems are a rich source of such stories, affording through the unity of their structure and (when they are good) the quality of their insight, some of the vital training in sensitivity and imagination that learning to hear and to tell perceptive stories oneself requires. Indeed, one might venture the conjecture that persons unacquainted with literature must have little understanding of their fellow human creatures. One might have some cause to distrust the putative insights, and the pronouncements based upon them, of a psychologist or a judge not versed in the ways of the human psyche revealed in literature. Part of what is involved in making wise pronouncements in such circumstances is insight into what it means for a client (i.e., another human being significantly like oneself) to be in a situation of this sort. Such insight is difficult to attain for circumstances of a kind one has never experienced. But categories of a reductivist sort cannot convey such meanings; well-crafted stories can go some way toward doing so.

Learning to understand, tuning one's sensitivity, through reading good literature, is of a piece with learning to understand and tuning one's sensitivity by listening to stories people tell about their own experiences. These processes are mutually enriching; one can better understand stories told in everyday and/or professional contexts through having read and thought well. And the experience of telling and listening to experience seriously, and to try to understand what it means to them, is a move toward closing a gap between theory and practice which manifests itself in the Rycroft-Sacks example, and in much of bureaucracy's manner of dealing with human beings in mass society. Turning our attention to human *experience* enables us to entertain the possibility that in instances where experience seems not to fall within the scope of certain theoretical constraints, it is just as possible that the theory might be at fault as it is that the experience is aberrant. An outstanding example of such a reversal in thinking about the relation between experience and theory is found in

Carole Gilligan's proposal, central to her argument in *In a Different Voice*, that the fact that female moral experience is such as to cause women to achieve low scores on Kohlberg's scale for the measurement of moral maturity might well be evidence for the inadequacy of the scale, rather than of female moral reasoning. And readers will be aware of the use Gilligan makes of narrative accounts of personal experiences in deriving these conclusions, moving toward a dissolution of the theory/practice dichotomy.

The point is that our ideas of what is possible for human beings come partly, at least, from stories. We learn something of what it is like to be in circumstances we have never experienced and perhaps never will experience partly, at least, from stories. Without such imaginatively-derived knowledge, it is difficult to see how we could begin to know other people; and without knowing them, to the extent that the situation demands, it is difficult to see how our judicial, clinical, or other decisions about their fate could be responsible decisions. It is an art to develop accounts that are sufficiently comprehensive to do justice to their subject, yet neither too cumbersome nor too unwieldy to be of interpretative and practical use. This is an art that must be cultivated in careful, communal practice; there are no rules of thumb to tell us how to do it. Because the fact that we are in communication with one another, we can come to some sort of agreement about the extent of knowledge situations demand. And it is clear that the knowledge allegedly captured in reductivist categories will not do.

Johnson and Scales are concerned to eradicate false dichotomies from our thinking. To some extent, this too can be achieved through imaginative thinking, acquired through story-telling and -listening. If we listen carefully to stories, we will see that experience does not come dichotomized, but that one has to impose dichotomies upon it. In so doing, one always risks creating irreconcilable polarities which set up unproductive adversarial modes of thinking, where richer, reciprocally influential ones are also available. I have given some indication of how this might work for the subjective/objective and the theory/practice dichotomy, and similar suggestions could be developed for the other dichotomies Johnson and Scales discuss, as they are manifested in, and tend to structure, the practices in which we participate.

In the light of the comparison I drew at the outset between the status of science and of law in contemporary society, it is worth adding a note about science, in conclusion. Reading Evelyn Fox Keller's *Gender and Science* (Yale University Press, 1985), and her biography of Barbara McClintock (*A Feeling for the Organism*, W. H. Freeman & Co., 1983) one comes to understand how scientific research might accommodate the process of listening to stories, and how some of its dichotomous structures

might thereby be broken down. These are not exactly stories *people* tell: first and foremost they are stories McClintock has become attuned to hearing from the specimens she studies, which generate the stories she herself then comes to tell in the development of innovative genetic theory. The point of Keller's work is to show not just that McClintock is an unusual scientist, but that within scientific practice *per se* there are ways of approaching objects of inquiry which challenge the need to think in terms of a subject/object dichotomy, opening the way to a reciprocal, subject-object relation. Space does not permit a detailed discussion of how this might work. Suffice it to say that Keller's work is consonant with much recent feminist discussion of the constraints—which seems plausibly to be characterizable as “masculine” constraints—inherent in traditional epistemology and philosophy of science, and productive of a long tradition of divisive thinking. This resonates with the work in feminist theory to which Johnson and Scales allude (p. 440), and underscores the importance of the challenge feminist thought is currently posing to all of our most taken-for-granted intellectual assumptions.

I indicated above that one can be a realist even while locating the source of truth in stories people tell. McClintock's example may clarify what I mean. McClintock came to see that anomalous color-patterns in ears of corn had a curious story to tell. Moving away from a preoccupation with sameness which established theory takes (like that pair of glasses on our nose) to observational activity, she learned, slowly and painstakingly, to hear what appearances of seemingly random difference meant to say. It would have been easier to dismiss such differences as aberrations; many theories produce just this sort of response to difference, as Gilligan has shown so clearly. But in her willingness to collaborate in the stories waiting to be told, McClintock came to a new understanding. The corn and its coloration patterns were there to be observed; she did not just make up what she saw, even though she told a new story about it. And there are stories she could *not* have told, because the phenomena did not lend themselves to that kind of recounting. So it is, too, with people. Even though, to an extent, we ‘make them up,’ and they make themselves up, in this continuous process of telling and retelling, we have good evidence that they are there to be made up. We can neither make them go away, nor can we erase many of the events in their lives. There are stories in which, by their nature, however fluid, they could not play a part. So there are true stories, if perhaps not True ones. There is something to go on, even though it is not as neat or as clean as scientific and legal and other practitioners long have wished.

That such bastions of truth as science and law can indeed effectively be opened to challenge produces vertigo (making us wonder what we have left to hang on to), and courage and hope (bringing us to realize

that things need not remain as they are/seem to be). It is not as if we are left with nothing to put in place of the old, timeless truths. What we have instead is communal practice, evidenced in the realization that "We communicate, therefore we are" (Johnson and Scales, p. 452). We need to make this practice as good, as responsible as we can, if the stories that grow out of it are to be stories we can live by. At least, starting from where we are now, we are not starting from scratch. We have all around us evidence of how things should not be, and must not be allowed to work, even if we are not yet sure how it would be best for them to work.